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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-
tively scheduled to meet on Tuesday, May 11, 2004 at 10:30 a.m. in Room 149 of the Capitol Annex. See tentative agenda on
pages 2253 - 2254 of this Administrative Register.
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2003 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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

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VOLUME 30, NUMBER 11 – MAY 1, 2004

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - MAY 11, 2004, at 10:30 a.m. in Room 149 of the Annex

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200 KAR 5:370 & E. Multistep competitive sealed bidding.

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Board of Embalmers and Funeral Directors
201 KAR 15:120. Requirements for applicants holding a license in another state. (Hearing/Written Comments Received)

Board of Occupational Therapy
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Board of Licensure for Massage Therapy
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection

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401 KAR 5:002. Definitions for 401 KAR Chapter 5. (Not Amended After Comments) (Deferred from January)
401 KAR 5:026. Designation of uses of surface waters. (Amended After Comments) (Deferred from January)
401 KAR 5:029. General provisions. (Not Amended After Comments) (Deferred from January)
401 KAR 5:030. Antidegradation policy implementation methodology. (Amended After Comments) (Deferred from January)
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401 KAR 51:001. Definitions for 401 KAR Chapter 51.
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401 KAR 51:052. Review of new sources in or impacting upon nonattainment areas.

Department for Surface Mining Reclamation and Enforcement

General Provisions
405 KAR 7:001. Definitions for 405 KAR Chapter 7. (Not Amended After Comments) (Deferred from December)

Permits
405 KAR 8:001. Definitions for 405 KAR Chapter 8. (Not Amended After Comments) (Deferred from December)

Bond and Insurance Requirements
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Office of the Secretary
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502 KAR 15:010. Accident Reports.

Criminal History Record Information System
502 KAR 30:000. Dissemination of criminal history record information.

Candidate Selection
502 KAR 45:115. Appeals.
Office of Minority Affairs
600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.
Motor Vehicle Commission

Commission
605 KAR 1:060. Temporary off-site sale or display event.

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Department for Medicaid Services

Medicaid Services
907 KAR 1:022 & E. Nursing facility and intermediate care facility for an individual with mental retardation or a developmental disability level of care criteria. (Hearing/Written Comments Received)

Department for Community Based Services
Protection and Permanency

Child Welfare
922 KAR 1:050. Approval of adoption assistance. (Amended After Comments) (Deferred from March)
922 KAR 1:310. Standards for child-placing agencies. (Amended After Comments) (Deferred from March)
922 KAR 1:320. Services appeals. (Deferred from January)
922 KAR 1:330. Child protective services. (Deferred from January)
922 KAR 1:350. Family preparation. (Amended After Comments) (Deferred from March)
922 KAR 1:480. Appeal of child abuse and neglect investigative findings. (Deferred from January)
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ADMINISTRATIVE REGULATION REVIEW PROCEDURE
(See KRS Chapter 13A for specific provisions)

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 and Public Comment Period
The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted for a 30 day period following publication.

The administrative regulation shall include: place, time, and date of hearing; the manner in which persons submit notification to attend the hearing and written comments; that notification shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, if the hearing is cancelled and no written comments are received. If the hearing is held or written comments are received, the administrative body shall file a statement of consideration with the Compiler within 15 days following the last day of the comment period.

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
After the public hearing and public comment period processes are completed, 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 30 days after being referred by LRC, whichever occurs first.
Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to reduce travel expenses in light of current budget issues. It is necessary to promulgate this administrative regulation on an emergency basis because the normal process will take several months significantly reducing the savings to the commonwealth, which is expected to be between $300,000 and $500,000. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler along with the emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Emergency Amendment)

200 KAR 2:006E. Employees' reimbursement for travel.

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101
EFFECTIVE: March 17, 2004

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
(2) "Agency head" means the elected or appointed head of a budget unit.
(3) "Approval" means approval granted in either written or electronic format.
(4) "Cabinet" means the Finance and Administration Cabinet.
(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.
(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 6:021.
(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.
(8) "Lodging receipt" means any preprinted invoice, from a hotel or motel, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.
(9) [(3)] "Others in the official service of the commonwealth" means individuals who are not state employees as defined in KRS Chapter 18A, but who are traveling on official business for the commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request and does not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.
(10) [(8)] "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(11) [(9)] "Residence" means address of the employee designated in the official records of the Department of Personnel Cabinet.
(12) [(10)] "Secretary" means the Secretary of the Finance and Administration Cabinet.
(13) [(11)] "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.
(14) "Subsistence and incidental receipt" means an itemized receipt for meals or incidental expenses showing the date of service, amount charged, and the same of the establishment.
(15) [(12)] "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government, except state-supported universities. It shall not apply to the Legislative and Judicial branches and their employees.
(2) Enforcement. (a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.
(b) A person who travels on official state business shall:
1. Identify a travel policy which establishes whether reimbursement is being requested based on Section 7 or 8 of this administrative regulation;
2. Prior to trip, create a Travel Authorization (TE, TEL, TEO, or TEC), if required;
3. After travel, create a Travel Payment Voucher (TP or TPI) document for reimbursement of business related expenses;
4. Maintain records and receipts to support his claim; and
5. Provide himself with sufficient personal funds to defray his travel expense.
(c) The secretary or his designee may:
1. Disallow, or reduce the amount of a claim that violates the provisions of this administrative regulation;
2. Require written justification for amounts claimed by an agency for its employee.
(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or his designee, submits a written determination that establishes the reimbursement is:
1. Required to avoid an undue economic hardship on the employee; or
2. Economically advantageous for the commonwealth.
(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head shall be reimbursed.
(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be final and conclusive.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the
office is located.
(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.
(3) If an employee is permanently reassigned, or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary's Order SOT-4S-B1.
(2) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (3), (4), and (5) of this section.
(3) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEQ) document.
(4) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.
(5) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:
(a) The agency head or a designated representative;
(b) The secretary or a designated representative; and
(c) The governor or a designated representative.
(6) A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before start of travel.

Section 5. Transportation. (1) Economy required.
(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.
(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.
(b)1. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.
(b)2. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on his Travel Payment Voucher (TP or TP)."
a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if his authorized work requires an absence:

1. At a destination more than forty (40) miles from his work station and home;
2. During the mealtime hours established by paragraph (d) or (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(d) Reimbursement for nonhigh rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed seven (7) dollars. [i]
2. Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed eight (8) dollars. [i]
3. Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed fifteen (15) dollars.

(e) Reimbursement for high rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed eight (8) dollars. [i]
2. Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed nine (9) dollars. [i]
3. Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed nineteen (19) dollars.

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if he is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:
1. The total payment of the meal and gratuity do not exceed the limits established in paragraphs (d) or (e) of this subsection; and
2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

(4) Transportation expenses.

(a) Reimbursement for authorized use of a privately owned vehicle shall:
1. Be made at the rate of thirty-two (32) cents per mile; and
2. Not exceed the cost of commercial coach fare.

(b) Mileage for in-state travel shall be based on the "Kentucky Official Highway Map". Out of state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas".

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TPI).

(d) Reimbursement for use of privately owned aircraft shall be made if, prior to use, written justification was submitted and approved by the agency head, or a designated representative.

(e) A maximum of twenty (20) [twelve (12)] dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

(f) Actual parking, bridge and highway toll charges shall be reimbursed.

2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(g) Reimbursement shall be made for reasonable incidental expenses [charged for]:
1. Baggage handling;
2. Delivery of baggage to or from a common carrier, lodging or storage; and
3. Overweight baggage charges, if the charges relate to official business.

(5)(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

(6)(a) Telephone and telegraph costs for necessary official business shall be reimbursed.

(b) Telephone calls to agency central offices shall be made through:
1. Agency 800 and 888 numbers, if available;
2. A state government telephone credit card; or
3. Lowest available service.

(7) Other incidental expenses may be allowed by the agency head or his designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;
(b) Governor's staff;
(c) Lieutenant governor;
(d) Elected constitutional officers;
(e) Cabinet secretaries;
(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;
(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;
(h) Members of statutory boards and commissions; and
(i) Others in the official service of the commonwealth.

(2)(a) Actual and necessary expenses of official business travel shall be reimbursed only upon submission of receipts. Items of expense not documented with a receipt shall not be reimbursed [for items over ten (10) dollars]

(b) Actual and necessary expenses for official business travel shall include:
1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately owned vehicle shall:
1. Be thirty-two (32) cents per mile; and
2. Not exceed the cost of commercial coach fare.

(e) The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or his designee.

2. The secretary or his designee may:
   a. Question a claim for reimbursement; and
   b. Reduce the amount to be reimbursed, if he determines that it is excessive.

(f) An employee of the Economic Development Cabinet or the Commerce [Tourism] Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:
1. Related to the promotion of industry, travel, or economic development;
2. Substantiated by receipts; and
3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and work station shall not be paid.

(2) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

(a) Residence and travel destination; or
(b) Work station and travel destination.

(3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel Payment Voucher (TP or TPI) document.
Section 10. Travel Documents. (1) Travel software shall have three (3) types of authorizations:
(a) TE or TEL for in-state travel;
(b) TEO for out-of-state travel; and
(c) TEC for out-of-country foreign travel.
(2) A traveler shall create a:
(a) Travel authorization (TE or TEL) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.
(b) Travel authorization (TEO) document for an out-of-state trip.
(c) Travel authorization (TEC) document for an out-of-country trip.
(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.
(4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on:
(a) A Vendor Payment Voucher (P1) document; or
(b) A Travel Payment Voucher (TP or TPI) document.
(5) A Travel Payment Voucher (TP or TPI) document shall be used to claim reimbursement for travel expenses.
(6) The Travel Payment Voucher (TP or TPI) document shall be limited to the expenses made by one (1) person for:
(a) Himself, and
(b) If applicable, another person.
1. Who is a ward of the commonwealth; or
2. For whom he is officially responsible.
(7) A Travel Payment Voucher (TP or TPI) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:
(a) Name; and
(b) Status or official relationship to the claimant's agency.
(8)(a) A Travel Payment Voucher (TP or TPI) document shall be submitted:
1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status for an extended period.
(b) A Travel Payment Voucher (TP or TPI) document shall include:
1. Social Security number of the claimant; and
2. Purpose of each trip.
(c) A Travel Payment Voucher (TP or TPI) document shall be signed and dated, or entered electronically and approved by the claimant; and
3. Agency head or authorized representative.
(d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TPI) may include expenses for six (6) months of a fiscal year.
(e) (9)(a) A Travel Payment Voucher (TP or TPI) document shall be:
1. Legibly printed in ink or typed; or
2. Processed electronically through travel software.
(b) A receipt shall provide the following information for each expense:
1. Amount;
2. Date;
3. Location; and
4. Type.
(c) Receipts shall be maintained at the agency if documents are processed electronically.
(d) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Travel Payment Voucher (TP or TPI) document (1999);
(b) Travel Authorization (TE or TEL) document for in-state travel (1999);
(c) Travel Authorization (TEO) for out-of-state travel (1999);
(d) Travel Authorization (TEC) document for out-of-country travel (1999);
(e) Vendor Payment Voucher (P1) (1999);
(f) Internal Travel Voucher (IIT) document (1999);
(g) Kentucky Official Highway Map (2004 [1998]);
(h) Rand McNally Road Atlas (2001 [1998]); and
(i) Secretary's Order 597-451, November 1, 1996.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 384, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: March 11, 2004
FILED WITH LRC: March 17, 2004 at 11 a.m.
CONTACT PERSON: Ed Ross, Controller, Finance and Administration Cabinet, Room 385, Capitol Annex; Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross
(1) Provide a brief summary of:
(a) What this administrative regulation does: Reimburses state employees' travel expenses.
(b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate administrative regulations relating to eligibility, requirements, rates and forms for reimbursement: of travel expenses and other expenses incidental to official activities out of the State Treasury.
(c) How this administrative regulation conforms to the content of the authorizing statutes:
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel and other official expenses out of the State Treasury.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: It will correct and clarify existing language and necessary document references, increase camping vehicles reimbursement, and reduce "no receipt" limits.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct and clarify existing language and necessary document references, increase camping vehicles reimbursement, and reduce "no receipt" limits.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel expenses and other official expenses out of the State Treasury.
(d) How the amendment will assist in the effective administration of the statutes: It will correct and clarify existing language and necessary document references, increase camping vehicles reimbursement, and reduce "no receipt" limits.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Employees' reimbursement for overnight camping will be increased by $5. Employees will be required to submit "actual and necessary" expense receipts for items over $5, a decrease from the previous requirement of receipts for items over $10.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Administrative costs should be minimal.
(b) On a continuing basis: Administrative costs should be minimal.
(c) Compared with the previous regulation: Administrative costs should be minimal.
(d) What is the source of the funding to be used for the imple-
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mentation and enforcement of this administrative regulation: Various governmental sources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No

(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

STATEMENT OF EMERGENCY
201 KAR 42:035E

This new emergency administrative regulation establishes the application process and curriculum required for licensure of massage therapists. This new emergency administrative regulation must be placed into effect immediately in order to comply with a deadline contained in the mandates of KRS Chapter 309. Application procedures must be enacted immediately to establish the fees for the application process for licensure by the board to begin and related grandfather provisions. This new emergency administrative regulation will replace an existing administrative regulation. The emergency administrative regulation was filed with the Regulations Compiler on March 17, 2004.

ERNIE FLETCHER, Governor
THERESA M. CRISLER, Chair

BOARD OF LICENSURE FOR MASSAGE THERAPY
(New Emergency Administrative Regulation)

201 KAR 42:035E. Application process and curriculum requirements.

RELATES TO: KRS 309.358, 309.359, 309.360
STATUTORY AUTHORITY: KRS 309.355(3)-309.360
EFFECTIVE: March 17, 2004

NECESSITY, FUNCTION, AND CONFORMITY: Requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.360. KRS 309.358 and 309.360 require the board to issue a license as a massage therapist to a qualified applicant, and after June 24, 2005, requires that the board may issue a license to an applicant. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:

(1) File a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in KRS 309.358 and 309.360;

(2) Pay by certified check or money order an application fee as established by 201 KAR 42:090, made payable to the Kentucky State Treasurer.

Section 2. To comply with KRS 309.358(1)(d) and 309.360(1), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows the completion of at least 500 classroom hours, consisting of the following minimum requirements:

(1) 100 hours of sciences to include anatomy, physiology, pathology and kinesiology;

(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:
   (a) Gliding strokes;
   (b) Kneading;
   (c) Direct pressure;
   (d) Deep friction;
   (e) Joint movement;
   (f) Superficial warming techniques;
   (g) Percussion;
   (h) Compression;
   (i) Vibration;

(j) Jostling;
(k) Shaking; and
(l) Rocking; and

(3) 200 hours of approach to the business of massage, including:
   (a) Contraindications;
   (b) Benefits;
   (c) Business;
   (d) History;
   (e) Ethics;
   (f) Legalities of massage; and
   (g) Courses designated to meet the school’s specific program objectives.

Section 3. To comply with KRS 309.360(4), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows completion of 200 hours of formal training, which shall include:

(1) 100 hours of sciences to include anatomy, physiology, pathology and kinesiology;
(2) Ninety eight (98) hours of massage or bodywork theory and application; and
(3) Two (2) hours of ethics.

Section 4. To comply with KRS 309.358(2)(d), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows the completion of at least 600 classroom hours, consisting of the following minimum requirements:

(1) 200 hours of sciences to include anatomy, physiology, pathology, and kinesiology;
(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:
   (a) Gliding strokes;
   (b) Kneading;
   (c) Direct pressure;
   (d) Deep friction;
   (e) Joint movement;
   (f) Superficial warming techniques;
   (g) Percussion;
   (h) Compression;
   (i) Vibration;
   (j) Jostling;
   (k) Shaking; and
   (l) Rocking; and

(3) 200 hours of approach to the business of massage, including:
   (a) Contraindications;
   (b) Benefits;
   (c) Business;
   (d) History;
   (e) Ethics;
   (f) Legalities of massage; and
   (g) Courses designated to meet the school’s specific program objectives.

Section 5. A person who is licensed, certified or registered in another state or country shall provide evidence of training and supervision that meets the requirements of KRS 309.358 and this administrative regulation.

Section 6. Appeals. An applicant may appeal for a board decision regarding his or her licensure application in accordance with KRS Chapter 13B.

   (2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of
Licensure for Massage Therapy has approved this administrative regulation prior to its filing by the Kentucky State Board of Licensure for Massage Therapy with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364.

THERESA M. CRISPER, Chair
APPROVED BY AGENCY: March 8, 2004
FILED WITH LRC: March 17, 2004 at 2 p.m.
CONTACT PERSON: Kristen Webb, Director, Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, phone (502) 584-4233, fax (502) 584-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen M. Webb
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the application process and curriculum requirements for licensure as a massage therapist.
(b) The necessity of this administrative regulation: KRS 309.355(3) requires the Board of Licensure for Massage Therapy to carry out the provision of licensure of massage therapists and KRS 309.358 and 309.360 require the board to establish an application process.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes explicit guidelines to carry out the provision of KRS 309.358 and 309.360.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes explicit guidelines enabling this board to implement KRS 309.358 and 309.360.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals planning to practice massage therapy; approximately 3,031 individuals currently practicing massage therapy; approximately 1,000 students currently enrolled in schools of massage therapy; and educational programs that provide the required massage therapy training.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Current and future massage therapists are given a mechanism for application as required under KRS 309.050 through 309.364. The administrative regulation and state requirements for licensure will be taught to students, ensuring each candidate for licensure understand the required state law and fees necessary for licensure under KRS 309.357. Schools should not find any additional expense due to this administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: Initial cost to implement this administrative regulation is for posting, printing and mailing it as part of the total set of new administrative regulations for the practice of massage therapy. This application process provides for fees to be paid to the board and brings in revenue. This revenue cannot be collected with printing costs of 2 page applications, for an estimated 1,000 applications who will use one or the other form in the second year.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding to be used for implementation enforcement is the proposed licensing fees. Proposed initial licensing fee is $125. A 2002 Opinion Research Corporation (ORC) Caravan survey by Decision Diagnostics estimated 3,031 practicing massage thera-
pists in Kentucky. An estimated 1,000 will apply for licensure in the first year, for a fund of $125,000. The majority is estimated to apply near the end of the grandfathering period, bringing another 2,000+ application fees for a second-year income of $250,000. It is to be noted that the assembly of this proposed administrative regulation presented no cost to the state prior to filing with the Compiler.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 309.358 and 309.360 require an application process for licensure as a massage therapist. This new administrative regulation creates this process does not require any new funding beyond what will be realized by the application fees.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees, but does reference fees as created under 201 KAR 42.020.
(9) TIERING: Is tiering applied? Tiering does not apply in this regulation regarding fees, however, grandfathering provisions and curriculum requirements are tiered based upon: 1) the time frame applicant applies for licensure; and 2) the number of years and experience of a licensee.

STATEMENT OF EMERGENCY
405 KAR 5:002E

This emergency administrative regulation is one (1) of eight (8) emergency administrative regulations related to the mining of non-coal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:058, 405 KAR 5:045, 405 KAR 5:060, 405 KAR 5:075, and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995 administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulation Review Subcommittee on August 7, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.030(2) and 13A.290(8). The proposed administrative regulations became effective September 12, 2003 notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)(2). 2004 House Bill 295 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to non-coal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications, while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAUJANA S. WILCHER, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Emergency Administrative Regulation)

405 KAR 5:002E. Definitions for 405 KAR Chapter 5.
RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300
EFFECTIVE: March 16, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the preservation and use of mined land. This administrative regulation establishes definitions of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.
(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.
(3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water or weathering processes, form acids that may create acid drainage.
(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entry ways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas and processing plants.
(5) "Backfill" means excavated overburden material used to regrade a mined area.
(6) "Cabinet" is defined in KRS 350.010(10).
(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce runoff velocity for deterring erosion.
(8) "Clay" means a natural substance or soft rock which, when finely ground and mixed with water, forms a pasty, moldable mass that preserves its shape when air dries; the particles soften and coalesce upon being highly heated and form a stony mass upon cooling.
(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.
(10) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or 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 this land use category.
(11) "Department" means the Kentucky Department for Natural Resources.
(12) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released and processing plant and stockpile areas have been moved.
(13) "Diversion ditch" means a channel constructed to direct water from one location to another.
(14) "Division" means the Division of Field Services of the Kentucky Department for Natural Resources.
(15) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, CaMg(CO3)2. Many limestones contain small amounts of dolomite; however, the term dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.
(16) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.
(17) "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two (2) or more different habitat types occurring in close proximity to each other. Where two (2) habitats meet is referred to as an "edge.
(18) "Embarkment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.
(19) "Ephemeral stream" means a stream which only flows 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.
(20) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.
(21) "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: woodlots or forested areas, shrub scrub areas, grass legume or combined areas, and wetland or open water areas arranged in a manner as to promote edge effect for wildlife.
(22) "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.
(23) "Fluorspar" means an ore of the mineral Fluorite CaF2. This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.
(24) "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees.
(25) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:05.
(26) "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate.
(27) "Ground cover" means the area of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.
(28) "Ground water" means water which is in the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.
(29) "Growing season" means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.
(30) "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.
(31) "Hollowfill" means a fill structure placed in a hollow 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) "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 requirement of KRS Chapters 350 through 353 or 405 KAR Chapters 1 through 30; which condition, practice, or violation 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 not expose himself to the danger during the time necessary for the abatement.

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

(34) "Industrial/commercial land use" means lands used for: (a) the extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included; or (b) the retail or trade of goods or services, including: hotels, motels, restaurants, stores, service stations, and other commercial establishments. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included.

(35) "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 throughout the calendar year; or
(b) A stream, or reach of stream, that is below the low water table for at least some part of the year, and obtains its flow from both surface water and ground water discharge. This term does not include ephemeral streams.

(36) "Land use" means the specific functions, uses, or management related activities of the proposed permit area, including both preexisting use and postmining use.

(37) "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral calcite CaCO₃. However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly calcite or dolomite, but may contain small amounts of iron-carbonates ( siderite).

(38) "Mast" means nuts, acorns, and fruit produced by certain woody plant species.

(39) "Mineral operation" means noncoal mining activities including: mining or limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; mining of fluor spar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this title. This term does not include coal mining or oil shale mining.

(40) "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

(41) "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(42) "Natural drainways" means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

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

(44) "Noxious plants" means species that have been included on state and federal lists of noxious plants.

(45) "Outslopes" means the face of the spoil, natural ground, or embankment sloping downward from the highest elevation to the lowest elevation.

(46) "Outstanding resource waters" means surface waters designated by the cabinet, pursuant to 401 KAR 5:031, Section 7.

(47) "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and used 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.

(48) "Perennial stream" means a stream, or stream reach, that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

(49) "Permanent impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dugout, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(50) "Permit" means written approval issued by the cabinet to conduct mineral operations.

(51) "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 mineral operations under that permit.

(52) "PH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

(53) "PLS" means pure live seed.

(54) "Point source" is defined in 401 KAR 5:050.

(55) "Recreational land use" 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.

(56) "Residential land use" means tracts employed for single and multifamily 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.

(57) "Roads" means haul roads and access roads constructed, used, reconstructed, improved or maintained for use in mining and stockpiling finished products, within permit boundaries. The term excludes any roadways located in the mining pit area.

(58) "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

(59) "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 engineering practices.

(60) "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

(61) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(62) "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and storage of sediment and other debris.

(63) "Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:
(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.
(b) An environmental harm is imminent if a condition, practice, or violation exists which:
   1. Is causing the harm; or
   2. May reasonably be expected to cause the harm at any time before the end of the reasonable abatement time.
(c) An environmental harm is significant, if that harm is appreciable, and not immediately repairable.

(64) "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. It may also be expressed as a percent or in degrees.

(65) "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 the most abundant, and leaching of soluble or suspended particles is typically the greatest.
(b) "E horizon": The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most
commonly differentiated from the overlying A horizon by a lighter color and generally measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below the E horizon and often called the ash soil. 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 biological activity.

(66) "Spoil" means overburden which has been removed during mineral operations.

(67) "Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, drainage, compacting, ripraping, or by vegetation.

(68) "Stream buffer zone" means an area of forest or field left untouched and undisturbed by the mineral operator during mining, including haul road construction.

(69) "Strip mining" is defined in KRS 350.010(2).

(70) "Surface disturbance of dredging river and creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(71) "Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction 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 used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

(72) "Surface disturbed areas" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharge, are not considered to be surface waters of the commonwealth.

(73) "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(74) "Tar sand or rock asphalt" means a porous, consolidated or unconsolidated sand or sandstone whose interstices contain asphalt or bitumen.

(75) "Tempo for mineral operation" means a mineral operation that operates for a total of six (6) months or less at a location.

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

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

(78) "Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurred or otherwise transported from the processing facilities or preparation plants of any kind.

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

(80) "Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(81) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water 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 the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

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

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

(82) "Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS 146.241.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5688, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions of certain essential terms used in 405 KAR Chapter 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.025, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party state agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish: 1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.

4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines essential terms used in 405 KAR Chapter 5 for noncoal mineral operations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this adminis-
The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluorspar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 203 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

An assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995, and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002, and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not directly or indirectly establish or increase fees.
(9) TIERING: Is tiering applied? Tiering is not applied because these definitions must apply equally to all nonsocial mineral operations.

**STATEMENT OF EMERGENCY**

405 KAR 5:032E

This emergency administrative regulation is one (1) of eight (8) emergency administrative regulations related to the mining of noncoal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:038, 405 KAR 5:045, 405 KAR 5:060, 405 KAR 5:075, and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995 administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulation Review Subcommittee on August 7, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.030(2) and 13A.290(8). The proposed administrative regulations became effective September 12, 2003 notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)2. 2004 House Bill 295 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to noncoal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAJUANA S. WILCHER, Secretary

**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**
Department for Natural Resources
(New Emergency Administrative Regulation)

405 KAR 5:032E. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

EFFECTIVE: March 16, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary to conduct noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservator and use of mined land. This administrative regulation specifies certain information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation shall pertain to any person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements. A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas; including but not limited to, location of access roads, spoil or waste areas, and sedimentation ponds. Personal of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons including appropriate representatives of the applicant.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Natural Resources, Division of Field Services, Noncoal Review Branch, #2 Hudson Hollow, Frankfort, Kentucky 40601, or to the Division of Field Services at one (1) of the following regional offices:
(a) London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9011;
(b) Madisonville Regional Office, 825 Hospital Drive, Madisonville, Kentucky 42431-1683;
(c) Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1229;
(d) Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9331; or
(e) Prestonsburg Regional Office, 3140 South Lake Drive,
Section 2. Identification of interests. (1) Each permit application shall contain the names and addresses of:
   (a) The applicant, including his phone number;
   (b) The registered agent for service of process, if applicable, including his phone number;
   (c) Any owners, partners, or if a corporation, any officers or stockholders owning ten (10) percent or more stock;
   (d) The project engineer, along with his registration number and name of associated firm;
   (e) The company and engineer in which correspondence concerning the subject permit shall be addressed to;
   (f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;
   (g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and
   (h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, the applicant shall list the names.

(3) The applicant shall specify the applicant's legal structure.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, the applicant shall specify the county and state where the name is registered.

(5) The applicant shall list previous Kentucky permits held by the applicant or any individual, partnership or corporation associated with the applicant.

(6) The applicant shall provide the name of the contact person at the site, including his phone number.

(7) The applicant shall specify the type of application, along with the permit number.

Section 3. Bond Information. If bond is required under 405 KAR 5:082, the following information shall be provided in the permit application:

(1) The bond amount per acre;
(2) The total amount of bond; and
(3) The bond type:
   (a) If a surety is used, the applicant shall provide the bond number and surety.
   (b) If a certificate of deposit is used, the applicant shall provide the bank name and CD number.
   (c) If a letter of credit is used, the applicant shall provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the owner, acknowledging approval of the activity.

(2) Except where mine access roads or haul roads join the right-of-way, if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and any required approvals from the appropriate agency or local government with jurisdiction over the road.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee will have no continuing maintenance responsibility after permit release shall be required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for any disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or any other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, the applicant shall state this in the application.

(8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6) shall be required.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representations, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map which shall:

(1) Delineate the proposed permit area and any areas overlying proposed underground workings;
(2) Be of a scale of not more than one (1) inch to 400 feet;
(3) Show all other mine operations within 500 feet of the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries;
(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners;
(5) Delineate all proposed access roads onto the proposed mineral operation;
(6) Show the site slope;
(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 5:026 and 401 KAR 5:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, Wildlife Management Areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary;
(8) Locate any sites listed on the National Register of Historic Places and any known archaeological sites;
(9) Delineate any wetlands which may be affected by the proposed mineral operation;
(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation;
(11) Show any proposed pit area, sediment structures, storage areas, and any other facilities and features related to the mineral operation;
(12) Provide a north point arrow;
(13) Contain a legend which shall:
   (a) Provide the company name;
   (b) Provide the application number;
   (c) Provide the county and quadrangle names;
   (d) Provide the site coordinates;
   (e) Provide the site address;
   (f) Provide the map scale and contour interval;
   (g) Provide a description of the site location including:
      1. The nearest stream; and
      2. The distance and direction from the nearest road intersection or town;
   (h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;
   (i) Provide acreage breakdowns of the various mineral opera-
tion features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected;

(i) Specify the deposit to be mined; and

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 332. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer’s registration number; and
(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:

(a) Latitude and longitude;
(b) The nearest community;
(c) The name of the nearest stream;
(d) The nearest public road intersection; and
(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur.

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance;

(3) A description of the mineral to be extracted.

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation.

(5) Specification of whether any active discharges exist which may affect the proposed mineral operation. If so, provide the following information:

(a) The pH of the discharge; and
(b) The source of the discharge.

(c) Specification of whether underground workings will be encountered, and the distance, in feet, to the nearest active deep mine.

(d) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural Resource Information. The applicant shall specify whether any sites listed on the National Register of Historic Places or any known archaeological sites exist within, or adjacent to, the proposed permit boundary.

Section 11. Environmental Resources Information. (1) The applicant shall indicate whether there are any Wildlife Management Areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them on the map.

(2) The applicant shall indicate whether disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(3) The applicant shall indicate whether there are any outstanding resource waters, pursuant to 401 KAR 5:026 and 401 KAR 5:031, within the vicinity of the proposed mineral operation. If so, the applicant shall delineate these waters on the map.

Section 12. Surface Water Quantity and Quality Protection Plan. The permit application shall contain a surface water quantity and quality protection plan which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 405 KAR 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings and specifications for each structure to include:

(a) The structure number;
(b) The number of acres to be disturbed within the drainage area;
(c) The number of acres in the drainage area;
(d) Sediment storage capacity;
(e) Storage capacity at the principal spillway;

(f) Storage capacity at the emergency spillway;
(g) Spillway capacities;
(h) Structure height measured from the downstream toe; and
(i) All other engineering designs, dimensions and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment will be removed and disposed.

(3) The applicant shall state whether any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate any other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment which demonstrates compliance with 405 KAR 5:055.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoils, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:

(a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary;
(b) Specifies the intended postmining land use for the proposed permit area; and
(c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.

(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:002.

Section 19. Revegetation. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:070, and is consistent with 405 KAR 5:065 and that provides the following information:

(1) Identification of the material that will be redistributed on the reggraded area as a plant growth medium.

(2) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with the application rates (pounds/acre).

(3) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre).

(4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be
incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky-registered professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) An applicant for a new permit required under KRS Chapter 350, shall publish at least once, a public notice of his application for that permit. The publication shall be made by advertisement in the newspaper of largest bona fide circulation, in the county where the proposed mining site is located. If the proposed mining site is in more than one (1) county, publication shall be required in the newspapers of largest bona fide circulation in each county.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals", and may be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

(a) Name and address of the applicant;
(b) Permit application number;
(c) The location of the proposed mining site; and
(d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mining operations.

(4) The applicant for a new permit required by KRS Chapter 350 shall establish the date and place at which the "Notice of Intention to Mine Noncoal Minerals" was published, by attaching to his application proof satisfactory to the cabinet of the time, place, and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained if the mineral permittee desires to modify his mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

(1) The application for revision shall be filed with the cabinet and approved prior to the date on which the mineral permittee expects to revise the mineral operation;

(2) The term of a permit shall remain unchanged by a revision; and

(3) The application for revision shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral operations under the permit. Applications for amendment may be filed at any time during the term of the permit.

(1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit under this administrative regulation.

(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:082E, for each additional acre or fraction of an acre.

Section 24. Permit Renewals. Any valid permit issued pursuant to 405 KAR Chapter 5 shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit.

(1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized under the existing permit, the portion of the application which addresses any new land areas shall be subject to all requirements of 405 KAR Chapter 5, and a new original permit application shall be required for these areas.

(3) The permit renewal shall be issued if the following requirements are met:

(a) The application for renewal shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2;
(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including but not limited to:
   1. An updated operational plan current to the date of request for renewal; and
   2. Specification of the status and extent of all mineral operations on the existing permit area;
(c) The present mineral operation is in compliance with KRS Chapter 350 and 405 KAR Chapter 5; and
(d) The mineral permittee shall provide any additional bond required in accordance with 405 KAR 5:082E.

Section 25. Permit Succession. (1) There shall be no succession on the permitted area without the prior written approval of the cabinet.

(2) The initial mineral permittee shall notify the cabinet, in writing, of any proposed succession.

(3) The cabinet may release the first mineral operator from reclamation responsibility under 405 KAR Chapter 5 as to that particular mineral operation, however:

(a) There shall not be release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of 405 KAR Chapter 5; and
(b) The successor shall immediately assume, as a part of his obligation under 405 KAR Chapter 5, all liability for the reclamation of the area affected by the former permitted mineral operation.

(4) If the cabinet has given its prior written approval to the succession, a successor in interest to a mineral permittee who applies for a successor permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(5) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

(a) To technically withdraw the permit application;
(b) To deny the permit application; or
(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date when the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall set forth the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet he may, by written notice, request a hearing by the cabinet pursuant to 405 KAR 5:085.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.
Section 27. Criteria for Permit Approval and Denial. No application for a permit and no mineral operation shall be approved, unless the application affirmatively demonstrates and the cabinet determines on the basis of information set forth in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that the applicant has complied with all requirements of 405 KAR Chapter 5.

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5.

(3) The proposed mineral operation will not constitute a hazard to, or do physical damage to, life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, street, lake, other public property or to members of the public, or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation which constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation.

(4) The proposed mineral operation will not adversely affect natural hazard lands or a wild river established pursuant to KRS Chapter 148.

(5) The proposed mineral operation will not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area.

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; or

3. If, after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby will be protected;

(e) Not within the distances specified in Section 5 of this administrative regulation, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an allowance, as required by Section 5 of this administrative regulation. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver. Waivers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 382.110 or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required under Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation will be conducted in compliance with KRS Chapter 350 and 405 KAR Chapter 5.

(2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and 405 KAR Chapter 5 and any conditions of the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters 1, 3, and 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for an mineral operation or any surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless:

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum determined by the cabinet after the Division of Abandoned Mine Lands has prepared an estimate of the cost to reclaim the lands, based upon site specific conditions.

(4) If the applicant, mineral operator, any subcontractor, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied; however, a mineral permittee shall not be relieved of responsibility with respect to any permit issued to him.

(5) If the cabinet determines that any activity of the applicant regulated pursuant to 405 KAR Chapter 5 is currently in violation of KRS Chapters 149, 151, 224, 350 through 354, 400 KAR Chapters 1 through 3, 401 KAR Chapters 4 through 100, 402 KAR Chapter 3, or 405 KAR Chapters 1 through 30, then the cabinet shall require the applicant, before issuance of the permit, to either:

(a) Submit proof which can be substantiated by the cabinet that the violation has been corrected, or is in the process of being corrected in good faith; or

(b) Establish, by proof that can be substantiated by the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(5) If the applicant submits the proof specified under subsection (5) of this section, then the cabinet may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination under this section, then he has the right to request an administrative hearing pursuant to 405 KAR 5:095.

Section 30. Permit Conference and Public Comment. (1) Procedures for requests. Any person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may request that the cabinet hold an informal conference on any application for a permit. The request shall:

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

(b) Be filed with the cabinet within fifteen (15) days of the newspaper advertisement.

(2)(a) The conference shall be held at the Division of Field Services.

(b) The conference shall be held within fifteen (15) days of the date of the request. The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(c) 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.

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

(e) All comments and evidence shall be taken into consideration by the Division of Field Services in Frankfort before a final decision is made on the disposition of the application.

(f) The record shall be maintained and shall be accessible to the public during the life of the mineral operation.

(g) Any person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may submit written comments to the cabinet.

Section 31. Existing Mineral Operations. (1) Existing mineral operations that were not permitted or regulated prior to the effective date of this administrative regulation shall obtain a permit within 180 days of the effective date of this administrative regulation.

(2) The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation where an existing disturbance within those limits was made prior to the effective date of this administrative regulation by an existing mineral operation that was not permitted or regulated prior to the effective date of this administrative regulation. These variances shall only be granted when no practical and reasonable remedial compliance measure can be identified.

(3) The distance limitations of Section 27(6) of this administrative regulation shall not apply where lesser distance limitations have been approved in a valid permit issued prior to the effective date of this administrative regulation. The distance limitations established in those permits shall continue to apply.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5698, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines, (502) 564-6940

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes permitting requirements for noncoa mineral operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party state agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.

The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes uniform requirements for applications for permits for noncoal mineral operations, and for review and processing of those applications. It specifies information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. It addresses the waivers and approvals necessary to conduct noncoal mineral operations. It includes procedures for review of permit applications and other permit related procedural matters.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluorspar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004, there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995 and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002 and statutory administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment. No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.

Tiering? Is tiering applied? Tiering is not applied in this administrative regulation. This administrative regulation sets requirements for the content of permit applications and procedures for decision making on those applications, which must be the same for all applications.

STATEMENT OF EMERGENCY
405 KAR 5:036E

This emergency administrative regulation is one (1) of eight (8) emergency administrative regulations related to the mining of non-coal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:038, 405 KAR 5:045, 405 KAR 5:060, 405 KAR 5:075, and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995 administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulation Review Subcommittee on August 7, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.030(2) and 13A.290(8). The proposed administrative regulations became effective September 12, 2003, notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)2. 2004 House Bill 295 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to non-coal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAJUANA S. WILCHER, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Emergency Administrative Regulation)

405 KAR 5:036E. Signs and markers.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

EFFECTIVE: March 16, 2004

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes provisions concerning signs and markers for noncoal mineral operations.

Section 1. General. (1) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material.
(2) Signs and other markers shall be maintained by the mineral permittee during all mineral operations to which they pertain, and shall be kept legible and visible and shall conform to all local ordinances and codes.
(3) Signs constructed pursuant to this administrative regulation shall be constructed of durable material, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways.
(2) Signs shall clearly identify the name, business address, and telephone number of the mineral permittee and identification numbers of current mineral operation permits or other authorizations to operate.
(3) The signs shall not be removed until after release of permit.
(4) Failure to post the signs shall be grounds for revocation of the permit.
(5) The permit boundaries shall be clearly marked by durable and easily recognized markers for the purposes of the permit walk.

Section 3. Stream Buffer Zone Markers. Except where specifically approved, lands within '00 feet of perennial and intermittent streams shall not be disturbed. These areas shall be designated as buffer zones, and shall be marked along the interior boundary of the buffer zone by durable and easily recognized markers.

Section 4. Blasting Signs. Blasting signs shall be posted in accordance with the requirements of the Kentucky Division of Mines and Minerals.

Section 5. Topsoil Markers. (1) If applicable, stockpiles and other areas where topsoil or other plant growth material are segregated, shall be marked.
(2) If soil horizons are removed and stored separately, each soil horizon stockpile shall have a separate and appropriately marked sign.
(3) Placement and quantity of markers shall be sufficient to clearly define the stockpiles.
(4) Markers shall remain in place until the material is removed.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5988, e-mail Jim.Villines@ky.gov
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines, (502) 564-6940

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for signs and markers at noncoal mineral operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by two legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party State agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.

4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(d) How this administrative regulation currently assists or will assist in the effective control of the statutes: This administrative regulation establishes specific requirements for signs and markers to identify the permit and delineate the permit boundary, markers to delineate and protect buffer zones along streams, and markers to protect topsoil stockpiles.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluorspar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending.

The permitted operations include 118 for limestone only, and include 92 that involve sand, gravel, clay, and shale, alone or in some combination. 185 of the operations are surface mines only, 24 operations involve underground mining, including 8 that are combined surface and underground mines.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995 and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002 and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.

(b) On a continuing basis: No significant cost is expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet’s Department for Natural Resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

STATEMENT OF EMERGENCY
405 KAR 5:042E

This emergency administrative regulation is one (1) of eight (8) emergency administrative regulations related to the mining of noncoal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:038, 405 KAR 5:045, 405 KAR 5:080, 405 KAR 5:075, 405 KAR and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995, emergency administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulations Review Subcommittee on August 7, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.030(2) and 13A.290(8).

The proposed administrative regulations became effective September 12, 2003 notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)(2). 2004 House Bill 295 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to noncoal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.

ERNIE FLETCHER, Governor
ENVIROMENTAL AND PUBLIC PROTECTION CABLET
Department for Natural Resources
(New Emergency Administrative Regulation)

106 KAR 6:043E. Blasting.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

EFFECTIVE: March 16, 2004

FORCE DISCRETION, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for the use of explosives by noncoal mineral operations.

Section 1. General. (1) If blasting is planned for the proposed mineral operation, it shall be conducted in accordance with the laws and administrative regulations of the Kentucky Division of Mines and Minerals, 805 KAR Chapter 4.

(2) If flyrock falls outside the permit boundary, or if property damage occurs outside of the permit boundary, as a result of flyrock, then appropriate mitigating measures shall be taken as determined by the cabinet based upon the nature and scope of the environmental and property damage.

Section 2. Blasting Signs. Warning signs shall be posted if explosives are to be used, in accordance with 405 KAR 5:038E.

LAJUNA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004, at 11 a.m.
CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5698, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for the use of explosives by noncoal mineral operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003, notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party states to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

3. The institution and maintenance of suitable programs for adaptation, restoration, and reutilization of mined lands.

4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for the use of explosives by noncoal mineral operations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluor spar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004, there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 22, 1995 and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002, and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.

(b) On a continuing basis: No significant cost is expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the general fund as budgeted to the cabinet's Department for Natural Resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or
VOLUME 30, NUMBER 11 – MAY 1, 2004

increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

STATEMENT OF EMERGENCY
405 KAR 5:048E

This emergency administrative regulation is one of eight (8) emergency administrative regulations related to the mining of non-coal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:038, 405 KAR 5:045, 405 KAR 5:060, 405 KAR 5:075, and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995 administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulation Review Subcommittee on August 7, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.030(2) and 13A.290(8). The proposed administrative regulations became effective September 12, 2003 notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)2. 2004 House Bill 295 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to non-coal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAJUANA S. WILCHER, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Emergency Administrative Regulation)

405 KAR 5:048E. Protection of environmental resources.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300
EFFECTIVE: March 16, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for the protection of fish and wildlife values and other environmental features.

Section 1. Environmental Resources. (1) A mineral permittee shall, to the extent possible, minimize disturbances and adverse impacts to fish and wildlife and related environmental values.

(2) No mineral operation shall be conducted which will result in the adverse effects to or modification of a wetland without the appropriate permits and approvals.

(3) No mineral operation shall be conducted within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; national recreational areas; state nature preserves dedicated pursuant to KRS 146.410; or state wildlife management areas; the Wild and Scenic Rivers System, including study rivers designated under section 5(a), of the Wild and Scenic Rivers Act (16 U.S.C. Sec. 1276(a)), or rivers or study river corridors as established in any guidelines pursuant to that Act; rivers and their corridors designated under the state Wild Rivers Act pursuant to KRS Chapter 146; or similar public lands.

(4) No land within 100 feet of an intermittent or perennial stream shall be disturbed by mineral operations, except if appropriate permits or approvals have been obtained.

(5) The cabinet shall prohibit a mineral operation on a natural hazard land if necessary to protect the health, safety, or welfare of people, property, or the environment.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILING WITH LRC: March 16, 2004 at 11 a.m.
CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-5640, fax (502) 564-5698, e-mail: Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for the protection of fish and wildlife values and other environmental features by noncoal mineral operations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003, notwithstanding findings of deficiency by two legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party state agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws or the continuing of the same in force, to accomplish:
1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This ad-
ministrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for the protection of fish and wildlife values and other environmental features by noncoal mineral operations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of sand or rock asphalt; and mining of fluorospar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The affected entities include 198 operations for limestone and dolomite and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995, and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002, and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.

(b) On a continuing basis: No significant cost is expected.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or, the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

STATEMENT OF EMERGENCY
405 KAR 5:062E

This emergency administrative regulation is one (1) of eight (8) emergency administrative regulations related to the mining of noncoal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:038, 405 KAR 5:045, 405 KAR 5:060, 405 KAR 5:075, and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995 administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulation Review Subcommittee on August 7, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.050(2) and 13A.290(8). The proposed administrative regulations became effective September 12, 2003 notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)2. 2004 House Bill 295 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to noncoal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAJUANA S. WILCHER, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Emergency Administrative Regulation)

405 KAR 5:062E. Handling of materials.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

EFFECTIVE: March 16, 2004

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for backfilling and grading, handling of waste, handling of acid or toxic-forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mining operations on steep slopes.

Section 1. Backfilling and Grading. (1) General statement concerning backfilling. All overburden that is not placed in approved excess spoil fills shall be placed back in existing pits and graded.

(2) Surface drainage.

(a) Natural drainways in the area affected by the mineral operation shall be kept free from overburden except if approved by the cabinet in accordance with 405 KAR 5:032E.

(b) If, during the mineral operation, it is necessary to cross a
natural drainage, proper drainage structures shall be provided.

(c) Sufficient water retarding structures, silt control structures, and diversion ditches, constructed as approved by the cabinet in accordance with 405 KAR 5:032E, shall be placed to control all runoff from the mineral operation before the work begins. These structures shall be located as near as possible to the disturbed area, and out-of-pit perennial streams unless approved by the cabinet in accordance with 405 KAR 5:032E.

(d) Any water accumulating on a bench or similar area where the drainage is off the mineral operation shall be pumped or siphoned into sediment control structures.

(e) The moving of overburden to release accumulated water shall be prohibited unless a drainage can be constructed with the approval of the cabinet. The cabinet may make this approval if the cabinet finds that the release is necessary to prevent the development of instability, and the release will not cause additional environmental harm.

(3) If the mineral operation produces a highwall, at least one (1) suitable access shall be provided to lands above the highwall within each 4,000 feet of distance along the highwall. In addition, access shall be provided as necessary so no landowner is prevented access to his property.

(4) Spoil or overburden removed shall be placed, graded, and stabilized so that soil erosion, surface disturbance, and stream sedimentation will be minimized.

(5) All grading shall be kept current and shall be completed before equipment pertinent to the mineral operation is moved from the site unless approved, in writing, by the cabinet's inspector, after making a finding that removal of the equipment is not in conflict with the approved method of operation and will not impede compliance with contemporaneous reclamation requirements.

(6) If conditions develop in the mineral operation so that the approved reclamation plan and backfilling and grading plan cannot be carried out as planned, modifications of the plan shall be submitted by the mineral operator to the cabinet for approval in accordance with 405 KAR 5:032E.

Section 2. Waste Materials. (1) The conduct of mining and the handling of refuse and other mining wastes shall be done in such a way as to reduce adverse effects in the area and to protect the public and adjoining landowners from damage to their lands, to streams, and to other property.

(2) Upon final abandonment, all buildings, structures, metal, lumber, and other refuse resulting from the mineral operation shall be removed or buried.

(3) Spoil, overburden, refuse, or any other mining waste shall not be placed on a previous or potential slide area. The placement of the material shall be subject to approval by the cabinet in accordance with 405 KAR 5:032E.

(4) Unless specifically authorized by the cabinet by a permit from the Division of Waste Management, household wastes or other wastes, generated off site, shall not be placed within the pit area or within the permit boundary of a mineral operation.

Section 3. Acid forming or Toxic Forming Materials. (1) All acid or toxic forming material shall be buried with not less than four (4) feet of clean fill as cover.

(2) Measures shall be taken to prevent stream and soil pollution, such as placement of acid or toxic forming materials outside of natural drainways.

(3) The mineral permittee shall conduct testing of materials as directed by the cabinet in order to prevent stream and soil pollution.

Section 4. Topsoil Handling. (1) General requirements.

(a) If practicable, all topsoil or subsoil to be saved for redistribution, specified under subsection (2) of this section, shall be removed as a separate layer or layers from the area to be disturbed and shall be segregated from other materials.

(b) If practicable, after removal, these materials shall be redistributed immediately to backfill areas, or otherwise stockpiled.

(c) After redistribution, if the topsoil becomes encrusted and hard, it shall be scarified prior to seeding.

(2) Soil removal. For areas where topsoil is to be removed and saved as a plant growth medium:

(a) Vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared. Herbaceous vegetation and other small plant forms which will add to the organic constituency of the topsoil, but do not interfere with topsoil salvaging, may be retained along with the topsoil.

(b) All the topsoil present in the area to be disturbed shall be removed and segregated for redistribution.

1. If less than six (6) inches of topsoil is present, then at least the upper six (6) inches of soil shall be removed and segregated for redistribution, except where less than six (6) inches of soil is present.

2. If less than six (6) inches of soil is present, whatever soil and subsoil is available, at the area to be disturbed, shall be removed and segregated for redistribution.

(3) Soil storage.

(a) Soil materials removed pursuant to subsection (2) of this section shall be stockpiled only if it is impractical to promptly redistribute the materials on regraded areas.

(b) Stockpiled soil shall be selectively placed on stable areas, outside of water drainways and shall:

1. Be protected from wind and water erosion through the seeding of quick cover grasses or legumes and application of mulch;

2. Be seeded with perennial grasses and legumes if the soil is to be stockpiled for more than two (2) years; and

3. Be protected from unnecessary compaction.

(4) Soil amendments.

(a) Lime shall be applied to redistributed topsoil in an amount to obtain a buffer pH of six and four-tenths (6.4).

(b) Adequate fertilizer shall be applied to redistributed topsoil at a minimum, 100 pounds of nitrogen (N) and 100 pounds of phosphorus (P₂O₅) shall be applied per acre.

(c) Areas where topsoil has been redistributed shall be seeded with quick cover and permanent grasses and legumes as soon as possible during first normal period of favorable planting.

(d) Stable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

Section 5. Disposal of Excess Spoil. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground water;

(b) Ensure mass stability and prevent mass movement and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Location. If possible, placement in pits shall be the preferred location for disposal. Otherwise the disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of 405 KAR Chapter 5, and shall be placed, if possible, upon or above a natural terrace, bench, or berm if this placement provides additional stability and prevents mass movement.

(3) Placement in pits. On a case-by-case basis, the cabinet may waive all or part of the requirements of subsections (4) through (7) of this section if spoil is placed in pits where there is no potential for mass movement or substantial erosion.

(4) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.
(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(5) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer.

1. The cabinet shall approve parameters used in the stability analyses if the parameters are based upon adequate investigations of foundation and fill material, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of the materials.

2. The cabinet may approve parameters based upon data obtained from sources other than laboratory analyses of the materials if that data would yield results which ensure compliance with the stability requirements of this administrative regulation.

3. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests upon an area which has a natural land slope in excess of 2.8:1v (thirty-six (36) percent) or a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock), rock toe buttresses, or a combination of these shall be constructed to ensure stability of the fill.

(6) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and redistributed in accordance with Section 4 of this administrative regulation. If approved by the cabinet in accordance with 405 KAR 5:032E, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts of a thickness approved by the cabinet to ensure stability based on site specific conditions; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings, and covered with topsoil or substitute material.

(c1). The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion, in accordance with 405 KAR 5:032E.

3. Terraces may be constructed on the outslope of the fill. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion, in accordance with 405 KAR 5:032E. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route runoff to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the fill.

(7) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability; except the cabinet may waive underdrain requirements for fills that are not hollowfills if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainways, or wet weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. Surface runoff from above the fill shall not be diverted through or under the fill.

(b) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill. Diversions associated with excess spoil fills and appurtenant structures shall be designed and maintained to safely pass the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event, except that diversions associated with hollowfills and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid forming, and nontoxic forming rock; shall be free of coal, clay, and non-durable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices. For hollowfills a subdrainage system for the fill shall be constructed in accordance with the following:

1. Be installed along the natural drainways;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

The cabinet may approve diversions located on fill material if necessary due to topography and configuration of the fill, if the cabinet determines that there will be no adverse impacts to the excess spoil fill, the public health and safety, and the environment.

(b) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. In disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

Section 6. Additional performance standards for mineral operations on slopes of more than twenty (20) degrees.

(1) The mineral permittee shall prevent the following materials from being placed or allowed to remain on the downhill slope:

(a) Spoil;
(b) Waste materials, including waste mineral matter;
(c) Debris, including that from clearing and grubbing of haul road construction; and
(d) Abandoned or disable equipment.

(2) Nothing in this section shall prohibit the placement of material on embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapter 5 and the material is moved and placed in a controlled manner.

(3) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(4) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5696, e-mail Jim.Villines@ky.gov
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for the handling of materials by noncoal mining operations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003, notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statute: The authorizing statute calls for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party State agrees to establish, administer and fund an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:
1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for backfilling and grading, handling of wastes, handling of acid or toxic forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluor spar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.
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(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.

STATEMENT OF EMERGENCY
405 KAR 5:07BE

This emergency administrative regulation is one (1) of eight (8) emergency administrative regulations related to the mining of noncoal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:038, 405 KAR 5:045, 405 KAR 5:060, 405 KAR 5:075, and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995 administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulation Review Subcommittee on August 7, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.030(2) and 13A.290(6). The proposed administrative regulations became effective September 12, 2003 notwithstanding the finding of deficiency, pursuant to KRS 13A.330(3)(a)(5). 2004 House Bill 283 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to noncoal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Emergency Administrative Regulation)

405 KAR 5:078E. Contemporaneous reclamation.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240,
350.300
EFFECTIVE: March 16, 2004
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028
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able administrative regulations for the reclamation of land dis-
turbed or removed in the mining of clay. KRS 350.300 authorizes
the cabinet to formulate and establish an effective program and
standards for the conservation and use of mined land. This admin-
istrative regulation establishes performance standards for timing of
reclamation.

Section 1. Contemporaneous Reclamation. (1) On lands where
the method of mineral operation produces a bench or where the
surface mining is done on the contour, grading shall be kept cur-
rent with the removal of the mineral, which shall mean within ninety
(90) days following the mineral removal. Where special conditions
warrant, these requirements may be modified by the cabinet.
(2) On lands where the method of mineral operation is of the
quarry type that produces a deep pit, the final reclamation of the
site shall follow completion of mining within 180 days.
(3) On lands where the method of mineral operation is of the
underground type, the final reclamation of the site shall follow
completion of mining within 180 days.

Section 2. Incorporation by Reference. (1) "Request for Non-
coal Reclamation Deferment, NCR-15", March, 1990, is incorporated
by reference.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Department for Natural Re-

sources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday
through Friday, 8 a.m. to 4:30 p.m.

LAJJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
CONTACT PERSON: Jim Villines, Manager, Program Devel-
opment and Coordination Branch, Department for Natural Re-

sources, 2 Hudson Hollow, Frankfort, Kentucky, 40601-4321,
phone (502) 564-6940, fax (502) 564-5698, e-mail
Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes requirements for contemporaneous
reclamation at noncoal mineral operations.
(b) The necessity of this administrative regulation: This administra-
tive regulation is necessary to implement an effective program
to control the effects of noncoal mineral mining operations, in ac-
cordance with KRS 350.028, 350.240, and the Interstate Mining
Compact as codified at KRS 350.300. It is also necessary to com-
ply with 2004 HJR 98, which requires the cabinet to promulgate
administrative regulations identical to those effective on February
22, 1995, which were amended on September 12, 2003 notwith-
standing findings of deficiency by two legislative subcommittees
and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The authorizing statutes call for the
effective control of surface disturbances in connection with mining
as defined by the Interstate Mining Compact. In Article III of the
Compact, each party State agrees to establish an effective
program for the conservation and use of mined land, by the estab-
ishment of standards, enactment of laws, or the continuing of the
same in force, to accomplish:
1. The protection of the public and the protection of adjoining
and other landowners from damage to their lands and the struc-
tures and other property thereon resulting from the conduct of
mining operations or the abandonment or neglect of land and
property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other
mining wastes in ways that will reduce adverse effects on the eco-

nomics, residential, recreational or aesthetic value and utility of land
and property.
3. The institution and maintenance of suitable programs for
adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil
pollution resulting from mining, present, past and future. This ad-
ministrative regulation is part of Kentucky's program at 405 KAR
Chapter 5 to meet these obligations.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statutes: This adminis-
trative regulation establishes performance standards for timing of
reclamation.

2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative
regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the
authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administra-
tion of the statutes: This is a new administrative regulation.

3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this adminis-
trative regulation: The regulated entities are noncoal mining activi-
ties: mining of limestone and dolomite; mining of sand and gravel,
surface disturbance of dredging of river or creek sand and gravel;
mining of clay; mining of tar sand or rock asphalt; and mining of
fluorspar and other vein minerals. These activities include both the
strip mining, and the surface effects of underground mining, of
nonmineral minerals. As of March 2004 there are 209 mineral opera-
tions under permit in 83 counties, with 4 new applications pending.
The permitted operations include 118 for limestone only, and in-
clude 90 that involve sand, gravel, clay, and shale, alone or in
some combination. 185 operations are surface mines only. 24
operations involve underground mining, including 8 that are com-
bined surface and underground mining.

4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: This
new administrative regulation applies to all noncoal mineral opera-
tions. It reestablishes the same requirements that were adopted Febru-
ary 25, 1995 and remained in effect until replaced by more string-
ent emergency administrative regulations on December 13, 2002
and ordinary administrative regulations on September 12, 2003.
Thus this administrative regulation does not subject the affected
entities to requirements that are different or more stringent than
previously applied to them.

5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No significant change in permitting or enforcement
workloads is expected to result from this amendment, and there-
therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.

6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: The
source of funding is 100% from the General Fund as budgeted to
the cabinet’s Department for Natural Resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not directly or indirectly establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

STATEMENT OF EMERGENCY
405 KAR 5:082E

This emergency administrative regulation is one (1) of eight (8) emergency administrative regulations related to the mining of non-coal minerals. These emergency administrative regulations are necessary in order to comply with 2004 House Joint Resolution 98, which requires the filing of emergency and ordinary administrative regulations identical to 405 KAR 5:001, 405 KAR 5:030, 405 KAR 5:035, 405 KAR 5:038, 405 KAR 5:045, 405 KAR 5:060, 405 KAR 5:075, and 405 KAR 5:080 as adopted on February 22, 1995. Proposed amendments to the February 22, 1995 administrative regulations were filed on April 11, 2003. The proposed administrative regulations were found deficient by the Administrative Regulation Review Subcommittee on August 8, 2003, and by the Interim Joint Committee on Agriculture and Natural Resources on September 10, 2003, pursuant to KRS 13A.030(2) and 13A.290(8). The proposed administrative regulations became effective September 12, 2003 notwithstanding the finding of deficiency, pursuant to KRS 13A.330(5)(a)(2). 2004 House Bill 296 rendered these deficient administrative regulations null, void, and unenforceable, leaving a major void among the regulatory requirements applicable to non-coal mineral operations. These emergency administrative regulations will restore the definitions of regulatory terms and the requirements for permitting, signs and markers, blasting, protection of environmental resources, handling of materials, contemporaneous reclamation, and reclamation bonds. An ordinary administrative regulation is not sufficient. Applications for new permits, amendments and revisions are pending. These emergency administrative regulations will protect human health and the environment while preventing a delay of several months in the processing of these applications while ordinary administrative regulations are in the process of being adopted. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The proposed ordinary administrative regulation was filed with the Regulations Compiler at the same time as this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAJJUANA S. WILCHER, Secretary

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Emergency Administrative Regulation)

405 KAR 5:082E. Reclamation bond.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

EFFECTIVE: March 16, 2004

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for when bond is required, bond amount, type of payment, bond forfeiture, and bond forms, for noncoal mineral operations.

Section 1. Applicability. A reclamation bond shall be required if the cabinet:

(1) Finds the mineral operation to be temporary; or
(2) Finds that the applicant previously has not had a mineral operation in the Commonwealth of Kentucky with a compliance record acceptable to the cabinet.

Section 2. Bond Amount. (1) If a reclamation bond is required pursuant to Section 1 of this administrative regulation, the mineral operator shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the penal sum of not less than $100 nor more than $500 for each acre or fraction of an acre, with a minimum bond of $2,000, for the permitted area.

(2) A mineral permittee may request reduction of the required reclamation bond amount at any time if the mineral permittee’s method of mineral operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and if the mineral operation complies with all applicable statutes and administrative regulations and the permit plan.

Section 3. Type of Payment. (1) Reclamation bond shall be either a surety bond or a cash bond which may include:

(a) Certificates of deposit;
(b) Letters of credit;
(c) Acceptable escrow accounts; or
(d) A combination of these bonding methods.

(2) If a surety bond is filed, it shall be accompanied by a power of attorney affidavit allowing the surety to act on behalf of the mineral permittee with respect to reclamation.

Section 4. Bond Forfeiture. (1) The cabinet shall have the authority to forfeit a bond if the mineral operation is not conducted in accordance with the statutes, administrative regulations, and the permit plan as approved by the cabinet.

(2)(a) The entire bond may be forfeited and deposited in an appropriate account for use in the payment of all costs associated with the reclamation and restoration of the permit area to which the forfeited bond applies.

(b) If forfeiture of the bond is required, the cabinet shall send written notification by certified mail, return receipt requested, to the mineral permittee and the surety holding the bond of the cabinet’s decision. This notification shall:
1. Explain the reasons for the forfeiture;
2. Indicate the amount to be forfeited; and
3. Advise the mineral permittee and those responsible for the bond of their right to a hearing.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Noncoal Performance Bond, NCR-9", February, 1992.
(b) "Letter of Credit, NCR-10", March, 1990.
(c) "Escrow Agreement, NCR-11", March, 1990.
(d) "Request for Bond Release, NCR-12", March, 1990.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for reclamation bonds for noncoal mineral operations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party state agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:
1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.
(d) How this administrative regulation currently assists or will assist the administration of the statutes: This administrative regulation establishes requirements for when bond is required, bond amount, type of payment, bond forfeiture, and bond forms, for noncoal mineral operations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluor spar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 22, 1995 and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002 and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not directly or indirectly establish or increase fees.

TIERING: Is tiering applied? Tiering is applied. This administrative regulation only requires a reclamation bond for temporary mineral operations and for applicants that previously have not had a mineral operation in the Commonwealth of Kentucky with a compliance record acceptable to the cabinet. These are classes of mineral operations that would pose the most risk of failure to reclaim.

STATEMENT OF EMERGENCY
907 KAR 1:019E

This emergency administrative regulation is being promulgated to establish a process for obtaining supplemental rebates from drug manufacturers. This action must be taken on an emergency basis to ensure the viability of the Medicaid Program. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients whose receipt of services might be jeopardized due to a lack of funding. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

ERNIE FLETCHER, Governor
JAMES W. HOLLSINGER, JR., M.D., Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(Emergency Amendment)

907 KAR 1:019E. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.61, 205.5631 to 205.5639, 205.584, 205.6316, 205.8451, 217.015, 217.822, 42 C.F.R. 430.10, 431.54, 440.120, 447.331, 447.332, 447.333, 447.334, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396f-8
STATUTORY AUTHORITY: KRS 1944.030(2) [(3)], 1944.050(1), 205.520(3), 205.561, 205.5632, 205.5634, 205.5639(2), 205.564(10), (13), EO 2003-064
EFFECTIVE: April 5, 2004
NECESSITY, FUNCTION, AND CONFORMITY: EO 2003-64.
effective December 16, 2003, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program, including the establishment of prior authorization procedures as authorized by KRS 205.5632 and Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and if provided, but not otherwise excluded, in accordance with Sections 2 and 3 of this administrative regulation.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Department's Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at http://chs.ky.gov/dms [http://chs.state.ky.us/dms].

(6) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(7) "Drug list [formulary]" means the Department for Medicaid Services' list which:

(a) Specifies:
1. Drugs and drug categories not covered by the department; and
2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and

(b) May include information about other drugs or drug categories and dispensing and prescribing information.

(8) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(9) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically-meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(12) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(13) "Maintenance drug dispensing fee exception" means an approval by the department for payment of a dispensing fee in accordance with 907 KAR 1:018 for a drug that has been designated as a maintenance drug in the department's drug list [formulary].

(14) "Manufacturer" is defined in 42 U.S.C. 1395r-8(k)(5).

(15) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16) "Official compendia" or "compendia" is defined in 42 U.S.C. 1395(r)(9)(B)(i).

(17) "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement "Caution: Federal law prohibits dispensing without prescription."

(18) "Pharmacy and Therapeutics Advisory Committee" or "committee" or "P&T Committee" means the pharmacy advisory committee established by KRS 205.564.

(19) "Prescriber" means a health care professional who, within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug that is ordered.

(20) "Recipient" means an individual eligible for and participating in a medical assistance program in the Department for Medicaid Services.

(21) "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(22) "Supplemental rebate" means a cash rebate that offsets a Kentucky Medicaid expenditure and that supplements the Center for Medicare and Medicaid Services National Rebate Program.

Section 2. Covered Benefits and Drug List [Formulary]. (1) A drug covered through the Outpatient Pharmacy Program shall be:

(a) Medically necessary;
(b) Approved by the Food and Drug Administration; and
(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.

(2) The department shall have a drug list [formulary] which:

(a) Lists drugs and drug categories not covered by the department and, if applicable, excluded medical uses for covered drugs;
(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;
(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;
(d) Lists covered over-the-counter drugs;
(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1395r-3(d), but for which the department makes reimbursement;
(f) Specifies covered vaccines;
(g) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;
(h) May be updated monthly or more frequently by the department;
(i) Shall be posted on the department's Internet web site.

(3) The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization. The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from this requirement based on documentation that drugs available without prior authorization:

(a) Were used and were not an effective medical treatment or lost their effectiveness;
(b) Are reasonably expected to not be an effective medical treatment;
(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or
(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:

(a) A drug which the Food and Drug Administration considers to be:
1. A less-than-effective drug; or
2. Identical, related, or similar to a less-than-effective drug;
(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in
the drug list (formulary):
1. A drug if used for anorexia, weight loss, or weight gain;
2. A drug if used to promote fertility;
3. A drug if used for cosmetic purposes or hair growth;
4. A drug if used for the symptomatic relief of cough and colds;
5. A drug if used to promote smoking cessation;
6. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;
7. An over-the-counter drug;
8. A barbiturate;
9. A benzodiazepine; or
10. A drug which the manufacturer seeks to require as a condition of sale that the prescribed tests or monitoring services be purchased exclusively from the manufacturer or its designee;
(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of recipients for the department to make payment for the drug and federal financial participation is available for the drug;
(d) Except in accordance with subsection (7) of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;
(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and
(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.
(2) If authorized by the prescriber, a prescription for a:
(a) Controlled substance in Schedule III-V, may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or
(b) Noncontrolled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.
(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:
(a) The drug is designated in the department's drug list (formulary) as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;
(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater; or
(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply.
(4) Prior authorization shall be obtained from the department in accordance with Section 4(1)(a) of this administrative regulation for maintenance drug dispensing fee exceptions if a refill of a maintenance drug occurs less than twenty-three (23) days from the last date the drug was dispensed.
(5) The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of recipients for the department to make payment for the compounded drug or compounded drug category.
(6) An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:
(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;
(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;
(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or
(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.
(7) If it is determined by the department to be in the best interest of recipients, the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.
(8) A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain non-emergency pharmacy services from the pharmacy to which the recipient has been restricted.

Section 4. Prior Authorization Process. (1) To request prior authorization for a drug, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, by mail, express-delivery service, or messenger service to the department. If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of the recipient or to avoid causing substantial pain and suffering, the completed request form may be sent to the department's urgent fax number. A request shall be submitted in accordance with the following:
(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist to obtain prior authorization for special dispensing requests involving:
1. Maintenance drug dispensing fee exceptions; or
2. Exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons;
(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available, unless the department has specifically exempted the drug from the requirement to use this form. The prescriber shall:
1. Complete a Brand Name Drug Request Form;
2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and
3. Indicate on the Brand Name Drug Request Form:
   a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and
   b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.
(c) A Brand Name Drug Request Form shall not be required if:
1. It has been determined by the department to be in the best interest of recipients not to require completion of a Brand Name Drug Request Form; and
2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.
(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request if the generic form of the proton pump
inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:
1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;
2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and
3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.
(2) If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:
(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with subsection (1) of this section;
(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:
1. If the prescriber indicates that a drug list [formulary] alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list [formulary] alternative; or
2. If the prescriber indicates that drug list [formulary] alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list [formulary] alternatives, shall:
   a. Request that the prescriber obtain prior authorization from the department; or
   b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with subsection (1) of this section; or
   c. Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:
      1. The emergency situation shall:
         a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and
         b. Exist if, based on the clinical judgement of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;
      2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with subsection (1) of this section:
         a. Submit a prior authorization request to the department's urgent fax number;
         b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;
      3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;
      4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1)(a), (b) and (c) of this administrative regulation; and
      5. The quantity of the emergency supply shall be:
         a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or
         b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.
(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:
(a) The prescription;
(b) The nursing facility order sheet; or
(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to the original prescription or nursing facility order sheet.
(4) The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:
(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone or fax to the party requesting the prior authorization and, if known, to the pharmacist.
(b) If the department denies a prior authorization request:
   1. The department shall provide a denial notice:
      a. By mail to the recipient and in accordance with 907 KAR 1:563; and
      b. By fax, telephone or, if necessary by mail to the party who requested the prior authorization.
(5) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.
(6) Prior authorization of drugs for Medicaid recipients in nursing facilities shall be in accordance with the following:
(a) The department may specify in its drug list [formulary] specific drugs or drug classes which shall:
   1. Not be exempted from prior authorization through use of a MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior Authorized for Nursing Facility Resident; or
   2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.
(b) A brand name drug for which the department requires completion of the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization by use of a MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior Authorized for Nursing Facility Residents.

Section 5, Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity:
(a) Shall be subject to [shall be exempt from] prior authorization in accordance with KRS 265.5632 [unless];
(b) The Pharmacy and Therapeutics Advisory Committee has reviewed the drug and made a recommendation regarding prior authorization and a final determination regarding prior authorization has been made by the secretary; or
(c) The drug is in a specific class of drugs for which the committee has recommended, and the secretary has determined, that all new drugs shall require prior authorization upon initial availability, in which case the drug shall require prior authorization and shall be scheduled for review by the committee within seventy-five (75) days of implementation of a requirement for prior authorization of the drug.
(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information, following information about a drug:
(a) The manufacturer's name, address, telephone number, fax number, and the name of a contact person;
(b) Information about the drug including the name of the drug, the National Drug Code number, the Average Wholesale Price, and the estimated cost per prescription;
(c) The date the drug became available on the market;
(d) Whether the drug is one (1) for which the manufacturer has entered into a rebate agreement in accordance with 42 U.S.C. 1329e-8(e);
(e) Drug package insert information; and
(f) A statement regarding whether the drug is a new chemical or molecular entity.
(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:
(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation shall be made by the department.
1. If a drug which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of recipients for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug based on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c) Within thirty (30) days of the date the committee’s recommendation is posted on the department’s web site, the secretary, in consultation with the commissioner and the department’s pharmacy [medical] director, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization. If the recommendation of the committee is not accepted, the secretary shall present the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1395r-8(d).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department’s Internet web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commission by a manufacturer or product shall be in accordance with KRS 205.5636(5). The appeal shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer’s actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.5646(5).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) The chair of the committee shall manage the meetings in a manner that shall provide for the orderly business of the committee and that shall provide reasonable opportunity for individuals to provide the committee with information in accordance with subsection (4) of this section.

(4) Any individual shall be permitted to make a presentation or provide written comments and documents to the committee in accordance with the following:

(a) The presentation or written comments and documents shall be limited to an agenda item;

(b) A request to make a presentation or provide comments or documents shall be submitted in writing to the department with a copy to the chair of the committee at least twenty-four (24) hours prior to the meeting; and

(c) The time limit for a presentation shall not exceed fifteen (15) minutes in aggregate per drug manufacturer or individual speaking on a particular position. The committee may vote to extend or restrict the time limit for presentations.

(4) [6] A recommendation by the committee shall require a majority vote.

(5) [6] Recommendations of the committee shall be posted as required by KRS 205.5646(5).

(5) [7] A drug manufacturer may request that its name be placed on the department’s distribution list for agendas of committee meetings. Placement of a drug manufacturer’s name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer’s name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:

(a) Manufacturer’s name;

(b) Mailing address;

(c) Telephone number;

(d) Fax number;

(e) E-mail address; and

(f) Name of a contact person.

(7) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.

(8) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.

Section 8. Drug Classes for P&T Committee Review. Following are the drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list:

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<tr>
<th>Narcotics - Long Acting</th>
<th>Nonsteroidal Anti-Inflammatory Drugs (Traditional NSAIDS)</th>
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<tr>
<td>Narcotics - Short and Intermediate Acting</td>
<td>Nonsteroidal Anti-Inflammatory Drugs (Traditional NSAIDS)</td>
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<td>Lipotropics - Nonslipins</td>
<td>Lipotropics - Statins</td>
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<td>Antifungals - Onychomycosis</td>
<td>Antifungals - Oral</td>
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<td>Antifungals - Oral</td>
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<tr>
<td>Antifungals - Topicals or Dermatitis</td>
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<td>Antivirals - Herpes</td>
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<td>Antivirals - Influenza</td>
<td>Insulins</td>
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<td>Cephalosporin First Generation</td>
<td>Oral Hypoglycemics - Alpha Glucosidase Inhibitors</td>
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<td>Cephalosporin Second Generation</td>
<td>Oral Hypoglycemics - Alpha Glucosidase Inhibitors</td>
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<tr>
<td>Cephalosporin Third Generation</td>
<td>Oral Hypoglycemics - Meglitinides</td>
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<td>Hepatitis C</td>
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<td>Macrolides</td>
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<td>Quinolones First Generation</td>
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<td>Histamine-2 Receptor Antagonists (H2RA)</td>
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<tr>
<td>Quinolones Third Generation</td>
<td>Proton Pump Inhibitors (PPI)</td>
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Section 9. [8:] Review and Final Determination by the Secretary. (1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:
   (a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and
   (b) Only information that was not available to be presented at the time of the committee's meeting shall be included in the written exception.

(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's Internet web site for six (6) months after which a copy of the final determination may be requested from the department.

(3) The secretary shall make a final determination in accordance with KRS 205.564(9).

(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to demand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:
   (a) Be in writing;
   (b) Be sent by mail, messenger, carrier service, or express delivery service to the secretary in a manner that safeguards the information; and
   (c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;

(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's Internet web site; and

(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 10. [9:] Appeal Rights. A Medicaid recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug based upon an application of this administrative regulation in accordance with 907 KAR 1:563.

Section 11. [10:] Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) 'MAP-82001 Drug Prior Authorization Request Form, January 30, 2003 [February 4, 2002], edition';
   (b) 'MAP-52101 Brand Name Drug Request Form, March 3, 2003 [February 8, 2002], edition';
   (c) 'MAP-012802 PPI and H2 Blocker Request Form, March 3, 2004 [January 28, 2002], edition'; and

(d) "MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior-Authorized for Nursing Facility Residents, December 1995 edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RUSS FENDLEY, Commissioner
JAMES W. HOLINGSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: March 31, 2004
FILED WITH LRC: April 5, 2004 at 4 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Owen

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the provisions for coverage of drugs through the Department for Medicaid Services (DMS) Outpatient Pharmacy Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation:

   (b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain the viability of the Medicaid Program.

   (c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing a supplemental rebate procedure; establishes prescription refill policy for controlled substances in Schedule III-V and non-controlled substances; allows an emergency supply of a drug for a long term care recipient to be dispensed after 5 p.m. EST; and establishes drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list.

   (d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation assists in the effective administration of the statutes by establishing a supplemental rebate procedure; by establishing prescription refill policy for controlled substances in Schedule III-V and non-controlled substances; by allowing an emergency supply of a drug for a long term care recipient to be dispensed after 5 p.m. EST; and by establishing drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect pharmacy services providers as well as Medicaid recipients.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation.
regulation, if new, or by the change if it is an amendment: Medicaid recipients will continue to receive needed pharmacy services based on receipt of supplemental rebates and providers of pharmacy services to nursing facilities will be allowed to dispense needed medications in a timely manner.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: DMS estimates this amendment will offset state fiscal year (SFY) 2005 expenditures by $40 million ($27.9 million federal funds; $12.1 million state funds).
(b) On a continuing basis: DMS estimates this amendment will offset SFY 2005 expenditures by $40 million ($27.9 million federal funds; $12.1 million state funds).
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will be state and federal generated.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not establish any fee nor increase any fee.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.
VOLUME 30, NUMBER 11 – MAY 1, 2004
ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation review Subcommittee
IJC = Interim joint Committee

KENTUCKY BOARD OF VETERINARY EXAMINERS
(As Amended at ARRS, April 14, 2004)

201 KAR 16:016. Fees.

RELATES TO: KRS 321.193, 321.195, 321.201, 321.207, 321.211, 321.217
STATUTORY AUTHORITY: KRS 321.193(2), 321.211
NECESSITY, FUNCTION AND CONFORMITY: KRS
321.193(2) and 321.211 require the Board of Veterinary Examiners to establish the application, examination, and renewal fees for veterinarians. This administrative regulation establishes the application, examination, and renewal fees.

Section 1. Application Fees. (1) The application fee for a licensed veterinarian shall be fifty (50) dollars.

(2) The application fee for a veterinary technician or a veterinary technologist shall be twenty-five (25) dollars.

Section 2. Examination Fees. (1) The fee for the North American Veterinary Licensing Examination (National Board Examination for Veterinary Medicine) shall be paid directly to the National Board of Veterinary Medicine ($140).

(2) [The fee for the Clinical Competency Test in Veterinary Medicine shall be $140.]

(3) The fee for the state examination shall be $100.

(3) (4) The fee for the veterinary technician or technologist examination shall be $100.

Section 3. Renewal Fees and Penalties for a Veterinarian, Veterinary Technician, and Veterinary Technologist. [No person holding a license shall practice in this state after November 30 of any year in which their license is to be renewed unless such license has been renewed as provided by KRS 321.211 and payment of the renewal fee has been made. All licenses not renewed by November 30 following the expiration date shall be deemed expired and any person holding an expired license shall engage in the practice of veterinary medicine.] The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure as a veterinarian shall be fifty (50) dollars.

(2) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for licensure as a veterinarian shall be $150.

(3) The renewal fee for reinstatement of licensure as a veterinarian after November 30 shall be $300.

(4) The renewal fee for renewal of licensure as a veterinary technologist or technician shall be thirty (30) dollars.

(5) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for renewal of licensure as a veterinary technologist or technician shall be forty (40) dollars.

(6) The renewal fee for reinstatement of licensure as a veterinary technologist or technician after November 30 shall be fifty (50) dollars.

Section 4. Special Permit Fee. The fee for a special permit shall be fifty (50) dollars.

Section 5. Fee for Issuance of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist. (1) The fee for issuance of a certificate to an animal control agency shall be fifty (50) dollars.

(2) The fee for issuance of a certificate to a certified animal euthanasia specialist shall be fifty (50) dollars.

Section 6. Renewal of Certification for a Certified Animal Control Agency and a Certified Animal Euthanasia Specialist. (1) Each certified animal control agency and certified animal euthanasia specialist shall annually, or on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. A certificate not renewed by March 1 of each year shall expire based on the failure to renew in a timely manner.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency or certified animal euthanasia specialist may continue to function and may renew the certificate upon payment of a late fee of sixty (60) dollars.

(3) A certificate not renewed before May 1 shall terminate based on the failure to renew in a timely manner. Upon termination, the certificate is no longer valid in the Commonwealth.

(4) After the sixty (60) day grace period, a certificate that has been terminated may be reinstated upon payment of a reinstatement fee of seventy-five (75) dollars.

(5) The renewal fee for the first renewal shall be waived for a certificate received within 120 days prior to the renewal date.

HOWARD RENNECKER, DVM, Chairman
APPROVED BY AGENCY: January 21, 2004
FILED WITH LRC: February 12, 2004 at 11 a.m.

KENTUCKY BOARD OF LICENSED VETERINARY EXAMINERS
(As Amended at ARRS, April 14, 2004)

201 KAR 16:050. Continuing education.

RELATES TO: KRS 321.211(7), 321.235(6), 321.441(2)
STATUTORY AUTHORITY: KRS 321.211(7), 321.235(1), (3), (5), (6), (7), 321.441(2)
NECESSITY, FUNCTION AND CONFORMITY: Pursuant to KRS 321.211(7) the board may require that a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine.

Section 1. (1) (a) A veterinarian shall be required to annually complete fifteen (15) hours of continuing education to be eligible for renewal of his license.

(b) Of the required hours, at least ten (10) hours shall be directly related to the practice of veterinary medicine and no more than five (5) hours may be in related areas such as practice management.

(c) A veterinarian may acquire no more than two (2) hours of continuing education in each renewal period by the completion of audio or video recordings, electronic, computer or interactive materials or programs on scientific subjects prepared or approved by any of the organizations identified in Section 2(1) and (2) of this administrative regulation.

(2) A veterinary technician and veterinary technologist shall annually complete six (6) hours of continuing education to be eligible for renewal of his registration.

(3) Continuing education shall be earned [be] from October 1 of each year until September 30 of the following year.

Section 2. Approved Courses. (1) The following programs shall be approved:

(a) All scientific programs of all organizations of the American Veterinary Medical Association, its constituent organizations and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine; [1] and

(b) [2] Programs which are approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB); and [1]

- 2288 -
All programs approved by the board, not associated with RACE or the American Veterinary Medical Association and its suborganizations.

Those programs shall impart knowledge directly relating to the practice of veterinary medicine to the end that the utilization and application of new techniques, scientific and clinical advances, and the achievement of research may assure progressive and comprehensive care to the public.

Section 3-2. (1) A licensee and a registrant shall:
(a) Secure documentation of attendance at a course; and
(b) Annually, list on "Licensed Veterinarian Annual Renewal Form" or "Veterinary Technician Annual Renewal Form", as appropriate, each course he attended.
(2) The board may require documentation of attendance at continuing education courses to be submitted to it.

Section 4. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or extensions of time within which to fulfill the same or make the required reports.
(a) (2) A written request for medical disability or illness waiver or extension of time shall be:
1. [a] Submitted by the licensee and registrant; and
2. [b] Accompanied by a verifying document signed by a licensed physician.
(b) (3) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the same may be granted by the board for a period of time not to exceed one (1) calendar year.
(c) (4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or registrant shall reapply for another extension.
(2) The board may grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.
(a) A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to have completed the continuing education requirement for licensure periods during which that [such] status exists.
(b) A licensee who is called to active duty in the armed forces, shall not be required to have completed the continuing education requirement for licensure periods during which that [such] status exists.
(c) The licensee requesting an extension or waiver under this provision shall submit the appropriate military assignment form, deployment orders, or a statement from the licensee's unit commander confirming the call-up or deployment.

Section 5. (1) [a] A license or registration that has been terminated shall be reinstated if a licensee or registrant submits proof that he has completed the required number of continuing education hours within the twelve (12) month period immediately preceding the date on which the application is submitted.
(b) The board may permit the immediate reinstatement of a terminated license or registration if the licensee or registrant agrees to complete the required number of continuing education hours within six (6) months of the date of reinstatement.
(2) Prior to renewal of a license or registration for the licensure period following the licensure period during which the license or registration was reinstated, a reinstated licensee or registrant shall have completed the number of continuing education hours required for renewal of a license or registration by Section 1 of this administrative regulation.

Section 6. (1) Incorporation by Reference. (a) The following material is [forms are] incorporated by reference:
(a) "Licensed Veterinarian Annual Renewal Form (95)"; and
(b) "Veterinary Technician Annual Renewal Form (95)".
(b) These forms may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m., or by sending a request to the board at P.O. Box 1360, Frankfort, Kentucky 40602.

HOWARD RENNECKER, DVM, Chairman
APPROVED BY AGENCY January 22, 2004
FILED WITH LRC: February 12, 2004 at 11 a.m.
CONTACT PERSON: Kristen Webb, Executive Director, Ken- tucky Board of Veterinary Examiners, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

BOARD OF NURSING
(As Amended at ARRS, April 14, 2004)
RELATES TO: KRS 314.011(12), 314.073, 314.991(1)-(3)
STATUTORY AUTHORITY: KRS 314.073, 314.131(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1), (2), and 314.073 authorize the Board of Nursing to promulgate administrative regulations that shall establish continuing competency requirements for nurses. This administrative regulation establishes the fees, procedures, and requirements for continuing competency for nurses.

Section 1. Definition. (1) "Contact hour" means fifty (50) minutes of an approved, organized learning experience.
(2) "Earning period" means November 1 through October 31 of a current licensure period.
(3) "Preceptor" means an experienced and competent nurse who assumes responsibility to assist with the clinical practice experience of a nursing student or new employee by serving as a role model, teacher, and resource.

Section 2. (1) A licensee shall choose a method from Section 3 of this administrative regulation to validate his or her [his] continued competency in nursing for each earning period.
(2) A licensee shall maintain the documentation of the method chosen.
(3) A licensee shall provide the documentation if directed by the board.

Section 3. Methods for continued competency validation are as follows:
(1) Thirty (30) contact hours of continuing education earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation;
(2) Current national certification or recertification and the continuing education required by Section 5 of this administrative regulation. The certification shall be related to the nurse's practice role and shall:
(a) Have been initially attained during the licensure period;
(b) If issued for a period of time as evidenced by an expiration date, have been in effect during the entire licensure period;
(c) Have been recertified during the licensure period; or
(3) Fifteen (15) contact hours of continuing education earned during the licensure period which shall include the continuing education required by Section 5 of this administrative regulation and at least one (1) of the following during the licensure period:
(a) Completion of a research project that is nursing-related;
1. As principal investigator, co-investigator, or project director;
2. That is qualitative or quantitative in nature;
3. That utilizes a research methodology;
4. That increases knowledge, causes an improved outcome, or changes behavior, and that is evidenced by an abstract of the project which includes a summary of the findings;
(b) Publication of a nursing-related article;
(c) A nursing continuing education presentation that is:
1. A presentation that is designed and developed by the presenter;
2. Presented to nurses or other health professionals; and
3. Evidenced by a program brochure, course syllabi, or a letter from the offering provider identifying the licensee's participation as the presenter of the offering.
(d) A nursing employment evaluation that is satisfactory for continued employment; [av]
(e) A successfully completed employment competency validation; or [ ]

1. Participation as a preceptor for at least one (1) nursing student or new employee undergoing orientation.
2. The preceptorship shall be for at least 120 hours.
3. There shall be a one-to-one relationship between the preceptor and the student or employee.
4. The preceptor may precept more than one (1) student or employee during the 120 hours.
5. The preceptorship shall be evidenced by written documentation from the educational institution or preceptor’s supervisor.

Section 4. (1) A licensee shall provide documentation of the methods used to validate continued competency if the licensee is the subject of a disciplinary complaint.

(2) A licensee shall provide documentation of the methods used to validate continued competency if requested by the board pursuant to a random audit of licensees.

Section 5. (1) A licensee may complete thirty (30) contact hours of continuing education activities from a provider approved by the board, pursuant to 201 KAR 20:220, during the earning period.

(2) Registered nurses and licensed practical nurses shall earn a minimum of two (2) contact hours of HIV/AIDS education:
(a) Approved by the Cabinet for Health Services pursuant to KRS 214.610; or
(b) Offered by a provider approved pursuant to 201 KAR 20:220.

(c) These contact hours shall be earned at least one (1) time every ten (10) years.
(3)(a) Partial credit for attendance at a continuing education activity shall not be given.
(b) A licensee who attends continuing education activities, whether as a teacher, participant, or student, shall attend the entire offering to be eligible to receive the number of contact hours for which the activity has been approved.

(4) A licensee shall determine whether a continuing education activity is offered by an approved provider.
(5) Advanced registered nurse practitioners shall earn a minimum of five (5) contact hours in pharmacology.
(6) Sexual assault nurse examiners shall earn the continuing education required by 201 KAR 20:411, Section 8.

Section 6. (1)(a) A licensee shall maintain records to substantiate methods used to validate competency.
(b) All records shall be retained for at least five (5) years following the current licensure period, except for HIV/AIDS education records which shall be maintained for twelve (12) years.
(2)(a) A licensee shall, upon request, furnish to the board or its staff, legible copies of the records required to be maintained by subsection (1) of this section.
(b) Copies shall be furnished within thirty (30) days of the date a written request is mailed by first class to the last known address of the licensee or applicant.
(c) Failure to furnish records as required by this administrative regulation shall be cause for the issuance of a complaint pursuant to 201 KAR 20:161 for failure to comply with KRS 314.073(2).
(3)(a) As provided by paragraph (b) of this subsection, if the board determines that a licensee has failed to comply with continuing competency requirements, he shall be allowed to cure the noncompliance if he:
1. Meets continuing competency requirements within ninety (90) days of notification of noncompliance;
2. Enters a consent decree with the board; and
3. Pays a civil penalty imposed by the board pursuant to KRS 314.991.
(b) The board shall issue a complaint pursuant to 201 KAR 20:161 if:
1. A licensee fails to furnish records as requested pursuant to subsection (2) of this section; or
2. There is evidence of fraud or deceit in procuring or attempt-
Section 2. (1) A breath alcohol analysis instrument shall be accurate within plus or minus 0.005 or plus or minus five (5) percent, whichever is greater, alcohol concentration units reading to be certified. To determine accuracy of instruments, a technician trained or employed by the [Forensic Services Division] [Laboratory Section of the] Department of State Police shall perform analyses using a certified reference sample at regular intervals.

(2) All breath alcohol analysis instruments shall be examined by a technician trained or employed by the [Forensic Services Division] [Laboratory Section of the] Department of State Police prior to being placed into operation and after repairs of any malfunction.

RODNEY BREWER, Lt. Colonel, Acting Deputy Commissioner
APPROVED BY AGENCY: January 28, 2004
FILED WITH LRC: February 13, 2004 at noon
CONTACT PERSON: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (502) 573-1636.

JUSTICE AND PUBLIC SAFETY CABINET
(As Amended at ARR's, April 14, 2004)

500 KAR 8:030. Administration of breath alcohol tests and chemical analysis tests.

RELATES TO: KRS 189A.103
STATUTORY AUTHORITY: KRS 15A.160, 189A.103
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.103(3)(a) requires the cabinet to promulgate administrative regulations establishing procedures for administering breath alcohol tests and chemical analysis tests of blood and urine. This administrative regulation establishes procedures for administering those tests [chemical-analysis-tests-pursuant-to-KRS-189A.105].

Section 1. The following procedures shall apply to breath alcohol tests:

(1) A certified operator shall have continuous control of the person by present sense perception for at least twenty (20) minutes prior to the breath alcohol analysis. During that period the subject shall not have oral or nasal intake of substances which will affect the test.

(2) A breath alcohol concentration test shall consist of the following steps in this sequence:

(a) Ambient air analysis;
(b) Alcohol simulator analysis;
(c) Ambient air analysis;
(d) Subject breath sample analysis; and
(e) Ambient air analysis.

(3) Each ambient air analysis performed as part of the breath alcohol testing sequence shall be less than 0.01 [0.040] alcohol concentration units.

Section 2. The following procedures shall apply regarding chemical tests of blood for alcohol or other substances:

(1) The blood sample shall be collected in the presence of a peace officer, or [another person] at the direction of the officer, another person who can authenticate the sample.

(2) The blood sample shall be collected by a person authorized to do so by KRS 189A.103(6).

(3) [Collection of] The blood sample shall be collected by the following method:

(a) [No] Ethyl alcohol (ethanol) [or other volatile organic substance] shall not be used to clean the skin where a blood sample is to be collected.

(b) [All samples shall be collected with needles and syringes or vacuum type collecting containers approved by the licensing agency of the collector.]

(e) Blood collecting containers shall not contain an anticoagulant or preservative which will interfere with the intended analytical method.

(4) [It is] Individual blood collecting containers shall be [appro-

priate and secure] labeled to provide the following information:

(a) The name of the person from which the blood sample is collected;
(b) The date and time the blood sample is collected;
(c) The name of the person and agency collecting the blood sample;
(d) The name of the officer and agency requesting the collection of the blood sample; and
(e) [The 1. Name of person giving sample; 2. Date and time of collection; 3. Collector's name and agency identification; 4. Requesting officer's name and agency identification; 5. Complete uniform citation number if available; and 6. Officer present during collection of sample].

(5) [43] The blood sample shall be delivered to a forensic laboratory branch of the [Branch of the Forensic Services Division] Department of State Police or other clinical laboratory as designated by the State Police [Kentucky State Police Forensic laboratory or a clinical laboratory certified by the Cabinet for Human Resources for analysis for the presence of alcohol or other drugs in the sample].

Section 3. The following procedures shall apply regarding chemical analysis of urine for substances of abuse including alcohol or other substances:

(1) A urine sample [samples] shall be collected [at two-2] separate times in the presence of a peace officer, or [another person] at the direction of the officer, another person who can authenticate the sample [samples]. The witnessing person shall be of the same sex as the person providing the urine sample.

(2) The urine sample shall be collected from the subject person’s voiding of his or her [filled] bladder. This urine sample may [subject person shall empty his bladder and this first sample shall be tested for substances of abuse or impairment including [either than] alcohol.

(3) The urine sample [Thirty 30 minutes following the initial emptying of the bladder, the subject person shall be requested to again empty his bladder and this second sample shall be tested for alcohol and may be tested for substances of abuse other than alcohol.]

(4) Samples shall be collected in clean, dry containers. [No] Preservatives shall not be used. [Each container shall be securely sealed.]

(5) The urine sample [It] Each container shall be [appropriately and securely] labeled to provide the following information:

(a) The name of the person from whom the urine sample is collected [giving the sample].
(b) The date and time the urine sample is collected [of collection].
(c) The name of the person and agency collecting the urine sample;
(d) The name of the officer and agency requesting the collection of the urine sample; and
(e) The complete uniform citation number if available.

(5) The urine sample shall be delivered to a forensic laboratory branch of the [Branch of the Forensic Services Division] Department of State Police or other clinical laboratory as designated by the State Police, [Collecting attending’s name and agency identification;]

(d) Complete uniform citation number; and
(e) Requesting officer’s name and agency identification.

(6) The urine samples shall be delivered to a Kentucky State Police Forensic laboratory or a clinical laboratory certified by the Cabinet for Human Resources for analysis for the presence of alcohol or other drugs in the sample.

RODNEY BREWER, Lt. Colonel, Acting Deputy Commissioner
APPROVED BY AGENCY: January 28, 2004
FILED WITH LRC: February 13, 2004 at noon
CONTACT PERSON: Terry D. Edwards, Legal Counsel, Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6318, fax (522) 573-1636.
JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, April 14, 2004)

501 KAR 6:020. Corrections policies and procedures.

RELATED TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. [1] [The following material is incorporated by reference. Department of Corrections Policies and Procedures include [Volume I, June 10, 2003].]

1.1 Legal Assistance for Corrections Staff (Effective 7/28/92)
1.2 News Media (Effective 1/13/98)
1.4 The Monitoring and Operation of Private Prisons (Effective 1/16/03)
1.9 Institutional Duty Officer (Effective 7/28/92)
1.11 Population Counts and Reporting Procedures (Amended 4/15/03)
1.12 Operation of Motor Vehicles by Department of Corrections Employees (Effective 3/15/01)
2.1 Inmate Canteen (Effective 12/17/98)
2.2 Warden’s Fund (Effective 7/28/92)
2.10 Surplus Property (Effective 7/28/92)
3.1 Code of Ethics (Amended 2/13/04)
3.3 Holding of Second Jobs by Corrections’ Employees (Effective 11/12/98)
3.4 Equal Employment Opportunity Complaint Procedure (Effective 7/15/02)
3.5 Sexual Harassment (Effective 11/12/98)
3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders (Effective 11/12/98)
3.7 Shifts, Posts and Days Off Assignment (Effective 6/15/99)
3.12 Institutional Staff Housing (Effective 8/15/01)
3.15 Antiharassment Policy (Effective 5/14/01)
3.18 Employee Insurance Coverage (Effective 11/17/00)
3.20 Communication and Recording Devices (Effective 3/16/99)
3.22 Staff Sexual Misconduct (Amended 2/13/04) [Added 6/10/03]
4.2 Staff Training and Development (Effective 8/15/01)
4.3 Firearms and Chemical Agents Training (Effective 8/15/01)
4.6 Operation and Safety of Corrections Firing Ranges (Effective 11/17/00)
4.7 Uniformed Employee Dress Code (Effective 2/10/97)
5.1 Research and Survey Projects (Effective 7/15/02)
6.1 Open Records Law (Effective 1/16/03)
6.5 E-mail (Effective 8/28/01)
7.2 Asbestos Abatement (Effective 8/15/01)
8.1 Occupational Exposure to Bloodborne Pathogens (Effective 1/23/93)
8.2 Fire Safety (Effective 2/15/01)
8.6 Extraordinary Occurrence Report (Amended 6/10/03)
8.7 Notification of Extraordinary Occurrence (Effective 9/16/99)
9.5 Execution (Effective 12/17/98)
9.6 Contraband (Effective 4/15/97)
9.8 Search Policy (Effective 4/15/97)
9.18 Informants (Effective 9/15/97)
9.19 Found Lost or Abandoned Property (Effective 9/15/97)
9.20 Electronic Detection Equipment (Effective 1/16/03)
10.2 Special Management Inmates (Effective 8/15/01)
10.3 Safekeepers (Effective 7/28/92)
11.2 Nutritional Adequacy of the Diet (Effective 7/15/01)
11.4 Alternative Dietary Patterns (Effective 7/15/02)
13.1 Pharmacy Policy and Formulary (Effective 7/28/92)
13.2 Health Maintenance Services (Effective 1/17/00)
13.3 Medical Alert System (Effective 1/16/03)
13.4 Health Program Audits (Effective 7/22/96)
13.6 Sex Offender Treatment Program (Effective 11/17/00)
13.1 Involutionary Psychotropic Medication Policy (Effective 12/7/95)
13.8 Substance Abuse Treatment Program (Effective 12/17/98)
13.9 Dental Services (Effective 1/16/03)
13.10 Serous Infectious Disease (Amended 4/15/03)
13.11 Employee Tuberculosis Program (Amended 4/15/03)
14.1 Investigation of Missing Inmate Property (Effective 9/15/97)
14.2 Personal Hygiene Items (Effective 9/15/97)
14.3 Marriage of Inmates (Effective 4/15/97)
14.4 Legal Services Program (Added 2/13/04)
14.5 Board of Claims (Effective 2/15/01)
14.6 Inmate Grievance Procedures (Amended 2/13/04) [Amended 4/16/03]
15.1 Hair, Grooming and ID Card Standards (Effective 2/19/01)
15.2 Offenses and Penalties (Amended 4/15/03)
15.3 Moratorium Good Time (Effective 1/18/03)
15.5 Restoration of Forfeited Good Time (Effective 9/16/99)
15.6 Adjustment Procedures and Programs (Amended 4/15/03)
15.7 Inmate Account Restriction (Amended 4/15/03)
15.8 Unauthorized Substance Abuse Testing (Effective 1/16/03)
15.9 Inmate Visits (Amended 2/13/04)
15.10 Inmate Correspondence (Amended 2/13/04)
15.12 Inmate Access to Telephones (Effective 11/17/00)
15.14 Inmate Packages (Amended 2/13/04)
15.17 Inmate Personal Property (Amended 2/13/04) [Amended 4/16/03]
15.17 Assessment Center Operations (Amended 4/15/03)
15.17 Controlled Intake of Inmates (Amended 4/15/03)
15.14 Administrative Remedies: Sentence Calculations (Effective 11/18/03)

[b]“Department of Corrections Policies and Procedures,” Volume II, April 16, 2003.]

18.1 Classification of the Inmate (Amended 4/15/03)
18.2 Central Office Classification Committee (Effective 9/14/99)
18.5 Custody and Security Guidelines (Amended 4/15/03)
18.7 Transfers (Effective 9/13/99)
18.9 Out-of-state Transfers (Effective 8/15/01)
18.11 Placement for Residential Mental Health Treatment (Effective 12/19/01)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Effective 11/17/98)
18.13 Population Categories (Effective 8/15/01)
18.15 Protective Custody (Effective 6/14/96)
18.16 Information to the Parole Board (Effective 12/19/01)
18.17 Interstate Agreement on Transfers (Effective 2/17/95)
18.18 International Transfer of Inmates (Amended 8/15/01)
18.19 Government Services Program (Amended 4/15/03)
18.2 Sentence Credit for Work (Amended 2/13/04) [Amended 4/14/04]
18.3 Inmate Wage Program (Amended 4/15/03)
20.1 Educational Programs and Educational Good Time (Effective 11/19/03)
20.3 Prerelease Program (Effective 8/28/92)
20.4 Institutional Inmate Furloughs (Amended 2/13/04) [Amended 4/16/03]
20.6 Community Center Program (Effective 12/19/01)
20.8 Extended Furlough (Effective 7/15/02)
20.10 Administrative Release of Inmates (Effective 11/1/96)
20.11 Victim Notification (Effective 12/19/01)
Probation Parole Procedures (Effective 12/19/01)  
Duties of Probation and Parole Officers (Effective 11/17/00)  
Workload Formula (Effective 12/19/01)  
Testimony, Court Deemor and Availability of Legal Services (Effective 8/15/01)  
Availability of Supervision Services (Effective 9/16/99)  
Equal Access to Services (Effective 8/15/01)  
Cooperation with Law Enforcement Agencies (Effective 8/15/01)  
Use of Force (Amended 4/15/03)  
Kentucky Community Resources Directory (Effective 8/15/01)  
Pretrial Diversion (Effective 5/14/01)  
Prerelease Probation (Effective 8/16/99)  
Supervision: Case Classification (Effective 5/14/01)  
Risk Assessment (Effective 8/15/01)  
Initial Interview (Effective 8/16/99)  
Conditions of Supervision and Request for Modification (Effective 9/16/99)  
Releasee's Report (Effective 9/16/99)  
Grievance Procedures for Offenders (Effective 11/17/00)  
Employment, Educational and Vocational Referrals (Effective 9/16/99)  
Supervision Plan (Effective 8/15/01)  
Casebook (Effective 12/19/01)  
Guidelines for Monitoring Financial Obligations (Effective 9/15/01)  
Community Service Work (Effective 12/19/01)  
Offender Travel (Effective 9/16/99)  
Drug and Alcohol Testing of Offenders (Effective 12/19/01)  
Alcohol Detection (Effective 9/16/99)  
Interstate Compact Transfers (Effective 5/14/01)  
Interstate Compact Out-of-state Probation and Parole Violation (Effective 2/15/01)  
Supervision Reports, Violations and Unusual Incidents (Effective 8/15/01)  
Search, Seizure: Chain of Custody; Disposal of Evidence (Effective 8/15/01)  
Absconder Procedures (Effective 9/16/99)  
Probation and Parole Issuance of Detainer or Warrant (Effective 9/16/99)  
Preliminary Revocation Hearing (Effective 8/15/01)  
Initial Interview of Probation and Parole Controlled Intake Program (Effective 11/17/00)  
Probationer Intake Notification (Effective 12/17/98)  
Probationer Status Change (Effective 8/15/01)  
Apprehension and Transportation of Probation and Parole Violators (Effective 12/17/98)  
In-state Transfer (Effective 1/16/03)  
Closing Supervision Report (Effective 8/15/01)  
Reinstatement of Offenders to Active Supervision (Effective 11/16/03)  
Assistance to Former Offenders and Dischargees (Effective 7/15/02)  
Restoration of Civil Rights (Effective 12/19/01)  
Firearms or Explosives Restoration (Effective 5/14/01)  
Offender Registration (Effective 11/17/00)  
Conditional Discharge of Sex Offenders (Effective 5/14/01)  
Use of Chemical Agents in Probation and Parole (Effective 9/16/99)  
Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments (Effective 8/15/01)  
Probation and Parole Investigation Reports (Administrative Responsibilities) (Effective 2/15/01)  
Presentence, Postsentence, Supplemental and Partial Investigations (Effective 12/17/98)  
Probation Parole Investigation Reports, Partial Investigation Reports and Submission Schedule (Effective 8/15/01)  
Release of Information of Factual Content on Presentence or Postsentence Investigation Reports (Effective 5/14/01)  
Probable Plans, Halfway House, Extended Furlough, Sponsorship, and Gradual Release (Effective 5/14/01)  
Expenditure Parole Plans (Effective 8/15/01)  
Furlough Verifications (Effective 5/14/01)  
Out-of-state Investigations (Effective 7/16/98)  

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet [General Counsel], Department of Corrections, PO Box 2400 [2439 Lawrenceburg Road], Frankfort, Kentucky 40602-2400 (40601), (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner  
APPROVED BY AGENCY: February 12, 2004  
FILED WITH AGENCY: February 13, 2004 at 11 a.m.  
CONTACT PERSON: Amy V. Barker, Staff Attorney, Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET  
Department of State Police  
(As Amended at ARRS, April 14, 2004)


RELATES TO: KRS 16.050  
STATUTORY AUTHORITY: KRS 16.050  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes the oral interview component of the examination.

Section 1. (1) Eligibility for the oral interview shall be determined by the commissioner.  
(2) Except as provided by subsection (3) of this section, eligibility for the oral interview shall be based upon:  
(a) An applicant's score on the Content Based Task Test; and  
(b) The number of positions required to be filled.  
(3) The commissioner may deviate from the order of Content Based Task Test score if a manifest imbalance of minorities or women exists in the pool of qualified applicants or in the department.

Section 2. (1) The oral interview shall be validated by an independent outside source with expertise in law enforcement training or employee selection.  
(a) An oral interview panel shall consist of three (3) members.  
(b) One (1) of the members shall be a:  
   1. Female; or  
   2. Member of a minority group.  
(c) One (1) of the members shall be a sworn officer.  
(2) (a) A member of an oral interview panel shall disclose each instance in which the member is personally acquainted with an applicant eligible for an oral interview, or with a member of the applicant's immediate family.  
(b) A member of an oral interview panel shall not interview an applicant with whom he is personally acquainted.

Section 3. (1) Prior to the oral interview, an applicant shall have completed and submitted to the department the "Cadet Trooper Background Profile".  
(2) Each interview shall be conducted as prescribed by the commissioner.  
(3) A panel member shall score each applicant in job related categories.
(4) For each category, an applicant shall be scored on a range from one (1) [zero] to five (5) [six (6)] with five (5) [six (6)] being the highest score and one (1) [zero] being the lowest score.
(5) The oral interview score shall constitute sixty (60) percent of an applicant's score.
(6) As soon as practicable after the oral interview, each applicant shall be advised of his score.
(7) The oral interview score shall constitute sixty (60) percent of an applicant’s score.
(8) As soon as practicable after the oral interview, each applicant shall be advised of his score.

Section 4. Incorporation by Reference. (1) "Kentucky State Police Cadet Trooper Background Profile 02-97" is incorporated by reference.
(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY BREWER, Lt. Colonel, Acting Deputy Commissioner
APPROVED BY AGENCY: January 15, 2004
FILED WITH LRC: February 13, at noon
CONTACT PERSON: Terry D. Edwards, Legal Counsel Office of Legal Services, 919 Versailles Road, Frankfort, Kentucky 40601
phone (502) 695-6318, fax (502) 573-1636.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, March 18, 2004)

703 KAR 5:001. Assessment and accountability definitions.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.
STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system to create and implement a statewide assessment and accountability program. This administrative regulation establishes definitions for Kentucky’s Assessment and Accountability Program.

Section 1. Definitions. (1) "A1 school" means a school under administrative control of a principal or head teacher and eligible to establish a school-based decision-making council. An A1 school is not a program operated by, or as a part of, another school.
(2) "A2 program [school]" means a district-operated, totally vocational-technical program [school], where the membership is counted in other schools.
(3) "A3 program [school]" means a district-operated, totally special education program [school].
(4) "A4 program [school]" means a district-operated, totally preschool program [e.g., Headstart, Kentucky Education Reform Act (KERA) Preschool, or Parent And Child Education (PACE)].
(5) "A5 program [school]" means an alternative program [school] which is a district-operated and district-controlled facility with no definable attendance boundaries that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 program [schools] typically include:
(a) Actual dropouts returning to an alternate educational environment;
(b) Potential or probable dropouts;
(c) Drug abusers;
(d) Physically abused students;
(e) Discipline problem students;
(f) Nontraditional students (e.g., students who have to work during the school day);
(g) Students needing treatment (e.g., emotional/psychological).
(6) "A6 program [school]" means a district-operated instructional program in a nondistrict-operated institution or school.
(7) "A2-A6 program [school]" means a program [school] which is classified as A2, A3, A4, A5, or A6.
(8) "Academic index" means the summary statistic or index which describes school success on the academic goals one (1), two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).
(9) "Accountability index" means the statistic defined in KRS 158.6451(1).
(10) "Accountability level" means elementary (grades end of primary, four (4), and five (5)), middle (grades six (6), seven (7), and eight (8)), or high school (grades nine (9), ten (10), eleven (11), and twelve (12)).
(11) "Adequate yearly progress in both reading and mathematics" means required performance of each school or district in obtaining:
(a) Annual measurable objectives in reading and mathematics in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;
(b) A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before.
(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as follows:

<table>
<thead>
<tr>
<th>YEAR</th>
<th>GRADUATION RATE GOAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>71.00</td>
</tr>
<tr>
<td>2003</td>
<td>73.25</td>
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<td>2011</td>
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<td>2012</td>
<td>93.50</td>
</tr>
<tr>
<td>2013</td>
<td>95.75</td>
</tr>
<tr>
<td>2014</td>
<td>98.00</td>
</tr>
</tbody>
</table>

; and
(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.
(12) "Adequate yearly progress in mathematics" means required performance of each school or district in obtaining:
(a) Annual measurable objectives in mathematics in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;
(b) A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before.
(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and
(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.
(15) "Adequate yearly progress in reading" means required performance of each school or district in obtaining:
(a) Annual measurable objectives in reading in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.;
(b) A prior year accountability index at the elementary and middle school levels that is eighty (80) or higher, equal to or
greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before;

(c) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 111(1)(c) of this administrative regulation; and

(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(14) "Alternate portfolio" means that component of the assessment system designed for students with legally-identified disabilities who cannot with the assistance of available accommodations, modifications, or both participate in the regular curriculum.

(15) "Alternate portfolio scores" means test scores assigned by teachers, or scores reassigned through state scoring review procedures, to a collection of best pieces of student work assembled through the instructional process.

(16) "Assistance line" means that unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2013-2014, with the calculated points defining this line rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line means a horizontal line at eighty (80) minus one (1) standard error of measurement.

(17) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 1998-99 and 1999-2000 school years, and is that number against which progress on the accountability index shall be measured.

(18) "Comprehensive school improvement plan" means a data driven and research-based framework developed by the school which contains specific recommendations from the staff and teams of parents for improving teaching and student learning and identifies priority needs for strengthening the school's instructional and organizational effectiveness.

(19) "Confidence interval" means a range of scores determined for which there is a designated percent confidence that a school or district score falls within this range.

(20) "District evaluation team" means one (1) or more staff or teams as established in 703 KAR 5:120.

(21) "Full academic year for a district" means a district is accountable for any student who is enrolled in the district any 100 instructional days from the district's first instructional day of the school year through the first day of the testing window for the appropriate accountability level established by the district.

(22) "Full academic year for a school" means a school is accountable for any student who is enrolled in the school any 100 instructional days from the first instructional day of the school year through the first day of the testing window.

(23) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(24) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(25) "Graduation rate" means the quotient of: [(number of current year grade 12 completers (standard diploma within four (4) years, including students with disabilities whose IEP's stipulate they will need more than four (4) years to obtain a standard diploma) divided by [number of current year grade 12 completers (includes standard diplomas plus certificates of completion), plus the number of current year grade 12 dropouts, plus the number of dropouts from the current 12th grade that dropped out as 11th graders, plus the number of dropouts from the current 12th grade class that dropped out as 10th graders, plus the number of dropouts from the current 12th grade class that dropped out as 9th graders].

(26) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2000-2001 and 2001-2002 school years.

(27) "In need of assistance" means the school's growth accountability index falls below its assistance point.

(28) "Level 1" means a classification assigned to a school that has an index score that places it in the highest one-third (1/3) of all schools below the assistance line.

(29) "Level 2" means a classification assigned to a school that has an index score that places it in the middle one-third (1/3) of all schools below the assistance line.

(30) "Level 3" means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

(31) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting school population served.

(32) "Meets goal" means a school with a growth accountability index that meets or exceeds its goal point and the school meets the dropout and novice reduction requirements of 703 KAR 5:020, Section 33.

(33) ([332]) "No child left behind improvement school or district" means a school or district that fails to make adequate yearly progress for two (2) consecutive years in the same content area, reading or mathematics.

(34) ([333]) "Nonacademic index" means the statistic which describes school success on the nonacademic goals set forth in KRS 158.6451(1)(c), (d), and (f).

(35) ([334]) "Participation in state-required assessments" means making a good faith effort by completing four multiple-choice items or responding to at least one constructed-response item in the reading and mathematics assessments combined for the appropriate grade level.

(36) ([335]) "Participation rate" means the percent of students who participated in the state-required assessments.

(37) ([336]) "Progressing" means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

(38) ([337]) "Reward share" means the unit of money as appropriated by the General Assembly to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(39) ([338]) "Safe harbor" means for a school or district that has not met the reading or mathematics annual measurable objective, that the school or district is considered to have met the objective in reading or mathematics if the school or district reduces its percent of total students or subgroup(s) (whichever group(s) did not meet the reading or mathematics annual measurable objective), scoring below proficient by ten (10) percent; and students in the same population or subgroup(s) demonstrate improvement or obtain a 100 or higher on the prior year academic index.

(40) ([339]) "Sample of schools" means a representation of schools, not exceeding five (5) percent of those with an accountability index above the assistance line.

(41) ([400]) "Scholastic audit" means a comprehensive review of a school's learning environment, efficiency, and academic performance of students to determine the level of support necessary to continuously improve student academic performance.

(42) ([411]) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth as defined in 703 KAR 5:020.

(43) ([423]) "School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

(a) The comprehensive school improvement plan;

(b) State assessment results;
(c) Federal accountability results; 
(d) Student achievement data; 
(e) Portfolio writing analysis data; 
(f) School survey data; 
(g) The school report card; 
(h) District technology inventory; 
(i) School handbook and master schedule; 
(j) School-based decision-making policies and meeting minutes;  
(k) Teacher lesson plans; 
(l) District evaluation plan; 
(m) Curriculum alignment documents; 
(n) Examples of student work; and 
(o) A listing of professional development activities.  

(44) [443] "School recognition points" means accountability index scores of fifty-five (55), sixty-six (66), seventy-seven (77), eighty-eight (88), and one hundred (100) on the accountability index scale used to recognize school standing. 

(45) [444] "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting school population served. 

(46) [445] "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed. 

(47) [446] "Standards and indicators for school improvement" means the evaluation tool used in the scholastic audit process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing comprehensive school and district improvement plans. 

(48) [447] "Standing of a school" means the actual performance of a school as measured by the accountability index. 

(49) [448] "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium. 

(50) [449] "Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished. 

(51) [500] "Student with limited English proficiency" means an individual who is an English language learner who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny the individual opportunity to meet the state's proficient level of achievement on state assessments and to successfully achieve in classrooms where the language of instruction is English or to participate fully in society. A "student with limited English proficiency" also means a student who: 

(a) is age three (3) to twenty-one (21), 
(b) is enrolled or preparing to enroll in an elementary school or secondary school, and: 
(a) [500] was not born in the United States or, whose native language is a language other than English; 
(b) [500] comes from an environment in which a language other than English has had a significant impact on the individual's level of English language proficiency; 
(c) [500] Is Native American, Alaska Native, or native resident of the outlying areas who comes from an environment in which a language other than English has had a significant impact on the individual's level of English language proficiency; 

(d) [500] Is migratory, whose native language is a language other than English, and comes from an environment in which a language other than English is dominant. 

(52) [500] "Sufficient size for calculating participation rates" means that a school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered and at least sixty (60) students in the subpopulation in these grades combined. 

(53) [500] "Sufficient size for making comparisons to annual measurable objectives" means that: 
(a) A school or district has at least ten (10) students in a subpopulation in each grade in which NCLB assessments are administered and: 
(b) At least sixty (60) [thirty (30)] students in the subpopulation in these grades combined or the subpopulation constitutes at least fifteen (15) percent of the students in these grades combined. 

(54) [503] "Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year. 

(55) [504] "Testing window" means a period of time designated annually by the Kentucky Department of Education within which all state-required assessment shall be administered. 

(56) [505] "Title I school or district" means a school or district eligible for and receiving Title I funds. 

(57) [506] "Writing portfolio score" means the score assigned by teachers, or score reassigned through portfolio scoring audit procedures, to a collection of a student's best work. 

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4). 

GENE WILHOIT, Commissioner 
HELEN W. MOUNTJOY, Chairperson 
APPROVED BY AGENCY: February 12, 2004 
FILED WITH LRC: February 12, 2004 at 1 p.m. 
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Metro Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321. 

EDUCATION, ARTS, AND HUMANITIES CABINET 
Kentucky Board of Education 
Department of Education 
(As Amended at EAARS, March 18, 2004) 

703 KAR 5:020. The formula for determining school accountability [performance classifications and school rewards]. 

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq. 
STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.6453, 158.6455 

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet or exceed their assistance line. This administrative regulation establishes a single assessment system with two (2) accountability dimensions: one (1) addressing the requirements of KRS 158.6455 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq. [procedures for determining successful schools, school rewards, and classifications of schools within the school accountability program.] 

Section 1. Assessments. (1) The Kentucky Department of Education shall administer the Kentucky Core Content Tests and norm-referenced tests. The Kentucky Core Content Tests shall be administered as follows: 

(a) Reading at grades 4, 7, and 10; 
(b) Mathematics at grades 5, 8, and 11; 
(c) Science at grades 4, 7, and 11; 
(d) Social studies at grades 5, 8, and 11; 
(e) Arts and humanities at grades 5, 8, and 11; 
(f) Practical living/vocational studies at grades 5, 8, and 10; 
(g) Writing at grades 4, 7, and 12; 
(h) Writing portfolio at grades 4, 7, and 12; and 
(i) Alternate portfolio at grades 4, 7, and the last anticipated year of attendance at the high school level. 

(2) The norm-referenced tests shall be administered in reading/language arts and mathematics at the end of primary, grade 6,
and grade 9.

(3) In order to comply with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., the Kentucky Department of Education shall augment the norm-referenced test to appropriately measure Kentucky's core content in reading and mathematics at grades 3 and 5. At grades 3 and 5 there is an additional augmented norm-referenced test that shall be administered in reading and at grade 4 and 7 an additional augmented norm-referenced test shall be administered in mathematics.

(4) Required participation in the National Assessment of Educational Progress. If a school is selected by the U.S. Department of Education or its designated contractors to participate in the state National Assessment of Educational Progress in reading, mathematics, and science at grades 4 and 8, the school shall participate fully. [Definitions. (1) "Academic index" means the summary statistic or index which describes school success on the academic goals one, two, five, six, and seven. (2) "Accountability index" means the statistic defined in KRS 158.645(1)(b).

(2) Accountability level means elementary (grades 1 through 5), middle (grades six through nine), and high school (grades nine through twelve). (3) "Assistance line" means that unique line for a school that starts in the biennium ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index score, increase in a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the biennium ending with the school year 2003-2004. The calculated points defining this line shall be rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line is a horizontal line at eighty (80) minus one (1) standard error of measurement.

(5) "Alternate portfolio" means that component of the assessment system designed for students with learning disabilities who cannot be tested in the regular curriculum.

(6) "Alternate portfolio scores" means the scores assigned by teachers, or scores reassigned through state scoring review procedures, to a collection of best pieces of student work assembled through the instructional process.

(7) "Baseline accountability index" means the accountability index score that describes the school's average performance during the 1998-99 and 1999-2000 school years, and is that number against which progress shall be measured.

(8) "Gained population" means students in grades at which accountability assessments are administered who now attend a different school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(9) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium. Points calculated defining this line shall be rounded to the nearest tenth. In any biennium, a school's growth accountability index shall be at or above this line in order to achieve a classification of meets goal in recognition of growth.

(10) "Growth accountability index" means the average accountability index that describes the school's performance every two (2) years beginning with the 2000-2001 and 2001-2002 school years.

(11) "Lost population" means students in grades at which accountability assessments are administered who no longer can attend a particular school because of service area boundary changes or other local board of education policy changes affecting the school population served.

(12) "Nonacademic index" means the statistic which describes school success on the nonacademic goals set forth in KRS 158.6451(1)(c), (d), and (f).

(13) "Reward share" means the unit of money to be distributed to schools, and is determined by the total amount of the money available for rewards in a biennium and the total number of shares to be awarded.

(14) "School classification" means the status of a school or school district, including meets goal, progressing, or in need of assistance based on measures of growth.

(15) "School" means an A1 school as defined in KRS 504(1).

(16) "School recognition points" means those points as defined in this administrative regulation for the purpose of recognizing school standing.

(17) "Stable population" means students in grades at which accountability assessments are administered who would have attended the school prior to and after any service area boundary changes or other local board of education policy changes affecting the school population served.

(18) "Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

(19) "Standing of a school" means the actual performance of a school as measured by the accountability index.

(20) "State goal" means 100 on the accountability index scale which all schools are expected to meet by the target biennium.

(21) "Student achievement levels" means categories of student learning in each of the content areas, including nonperformance, medium novice, high novice, low apprentice, medium apprentice, high apprentice, proficient, or distinguished.

(22) "Target biennium" means the biennium by the end of which schools are expected to reach the state goal, which is the biennium ending with the 2013-2014 school year.

(23) "Threshold" means the point on the goal line corresponding to the end year of the biennium.

(24) "Writing portfolio scores" means the scores assigned by teachers, or scores reassigned through portfolio scoring audit procedures, to a collection of a student's best work.

Section 2. Academic and Nonacademic Index Calculations. (1) For purposes of calculating a school's academic indices, the school shall be held accountable based on an aggregated average of the performance of the elementary, middle, and high school students who have been enrolled in the school for a full academic year in the accountability grades.

(2) The points assigned to students shall be measured at each student's achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:

(a) Nonperformance - if a total open-response raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing or alternate portfolio, a blank or incomplete response shall be assigned a score of zero.

(b) Medium novice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of twenty-six (26);

(c) High novice (reading, mathematics, science, and social studies) shall be assigned a score of forty (40);

(d) Low apprentice (reading, mathematics, science, and social studies) shall be assigned a score of sixty (60);

(e) High apprentice (reading, mathematics, science, and social studies) shall be assigned a score of eighty (80);

(f) Proficient in all content areas shall be assigned a score of 100, or distinguished in all content areas shall be assigned a score of 140.

(2) For all content areas except writing, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns sixty-seven (67) percent of the weight of the scores from open-response items and thirty-three (33) percent of the weight from multiple-choice items. The writing score shall be based on the writing prompt and the writing portfolio.

(3) The values for attendance rate and successful transition to
adult life rate shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:

(a) Attendance, primary through grade twelve (12);
(b) Retention rates, grades four (4) through twelve (12);
(c) Dropout rates, grades seven (7) through twelve (12); and
(d) Successful transition to adult life for the graduating students.

(4) Scores from alternate portfolios shall be included in the academic indices so that the data from an alternate portfolio completed by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school levels. The same requirement shall be applied to calculations required by “No Child Left Behind Act of 2001” 20 U.S.C. 6301 et seq.

Section 3. Components of the Accountability Index and Weights. (1) The accountability index shall consist of two (2) components. Component one (1) consists of academic indices and the nonacademic index. Component two (2) shall be an index created from a national norm-reference test (NRT). Component one (1) shall comprise ninety-five (95) percent of the total index. Component two (2) shall comprise five (5) percent of the index.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

(3) Computing the academic index for each of the content areas of writing, reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies shall be based on the average of student scores as described in Section 2(1) of this administrative regulation. Component one (1) of the accountability index shall be calculated according to the following weights:

(a) Elementary school (grades end of primary - grade 5)

<table>
<thead>
<tr>
<th>Content Area</th>
<th>Component One (Without NRT)</th>
<th>Component One and Two (With NRT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
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<tr>
<td>Mathematics</td>
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<td>19.00%</td>
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<tr>
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</tr>
<tr>
<td>Social studies</td>
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<td>Arts and Humanities</td>
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<td>Attendance Rate</td>
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<td>100%</td>
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</table>

(b) Middle school (grades 6 - 8)

<table>
<thead>
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<th>Content Area</th>
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<th>Component One and Two (With NRT)</th>
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</thead>
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<tr>
<td>Science</td>
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<td>14.25%</td>
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<tr>
<td>Social studies</td>
<td>15%</td>
<td>14.25%</td>
</tr>
<tr>
<td>Writing (15%)</td>
<td></td>
<td></td>
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(4) The academic index for each content area and the nonacademic index shall be determined by summing the indices as described in this section.

(5) Component one (1) of the accountability index shall be calculated by aggregating the data from all of the students in the school.

(6) Component two (2) of the accountability index shall be derived from the national norm-reference assessment as follows:

(a) Student performance standards comparable to those used in component one (1) and described in Section 2 of this administrative regulation shall be established by the end of the year 2000.

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation; and

(c) The component two (2) index shall be based on the average of the scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades 4 and 5 at the elementary level, grades 7 and 8 at the middle school, or grades 10, 11, and 12 at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit, for both state and federal school accountability purposes.

(2) A school that does not contain a grade at which the national norm-referenced test is administered shall have its accountability index calculated using only the weights specified as component one (1) of the index in Section 3 of this administrative regulation. Schools that have more than 1 grade at which the national norm-referenced test is administered shall have those grades combined to form the basis for component two (2) of the calculations described in Section 3 of this administrative regulation.

(3) A school or school district may request a waiver of the requirements of subsections (1) and (2) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other...
combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school’s classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the biennium for which the waiver is requested. [For the biennium ending in school year 2000, a waiver request shall be received by the Kentucky Department of Education by September 1, 1999.]

Section 5. Schools Having More Than One (1) Accountability Level. If a school has more than one (1) accountability level, the school’s accountability index shall be the average of the academic and nonacademic data for the school. This average accountability index shall be applied toward making adequate yearly progress decisions.

Section 6. School Service Area Reconfigurations. (1) If as a result of a reconfiguration to service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school’s student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

(2) A school that would be considered a reconfigured school in the 1998-1999 school year shall be treated as if it were not reconfigured, with the exception that the nonacademic index for the district from the previous year at the corresponding level (elementary, middle, or high school) shall be substituted for that school’s nonacademic index where schools reconfigured after the 1998-1999 school year shall be assigned a baseline calculated from the 1995-1996 and 1999-2000 aggregate district level data for the appropriate level (elementary, middle, or high school). (3) A school district shall notify the Department of Education of any school considered a reconfigured school as provided in this administrative regulation by September 30 of the school year in which the reconfiguration occurs.

(a) For the purpose of assigning a school classification of meets goal, progressing, or in need of assistance (performance judgment of meets goals, progressing, or assistance), a school that is considered a reconfigured school in either year of a biennium after 2000 on which accountability decisions are based shall have the performance judgment that would have applied to the district at that time had the elementary, middle, or high school, if separate decisions (elementary, middle, or high school) were to be applied at the district level. In the alternative, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. (b) The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall not be implemented until the affected schools have a complete biennium of data to be considered in the growth calculations. A condition for acceptance of the plan shall be that each affected school and school district shall waive in writing its right to make the plan the basis of a subsequent appeal of a school’s classification.

(b) To determine whether a reconfigured school meets adequate yearly progress for the first three (3) years the school is reconfigured, the determination shall be made based on whether the school meets the annual measurable objectives established in reading and mathematics and has a participation rate for the school and its subpopulations of sufficient size identified in 20 U.S.C. 6391 et seq., of at least ninety-five (95) percent. Beginning with the fourth year of the school’s reconfiguration, the school shall meet all requirements for making adequate yearly progress as provided in Section 10(2) of this administrative regulation.

(c) In the alternative to paragraph (b) of this subsection, a school district may submit to the Department of Education a plan for reconstituting data necessary to determine whether a reconfigured school has met all requirements for meeting adequate yearly progress taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in annual calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall be implemented the year of the reconfiguration.

(4) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remaining stable be considered within the accountability system using its established historical data.

(5) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council, or the principal, if a school does not have a council, and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) To establish expected levels of growth for each school, a straight line shall be drawn from a school’s baseline minus one (1) standard error of measurement established in the 1998-1999 and 1999-2000 biennium to the state goal of a growth accountability index of one hundred minus one (1) standard error of measurement by 2014.

(2) There shall be five (5) points of school recognition. These shall be determined from the baseline data (school years 1998-1999 and 1999-2000) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition point shall be set at 100 on the accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school’s growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school’s growth accountability index meets or exceeds its goal point and meets the dropout and novice reduction requirements of this section.

(3) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to five and three-tenths (5.3) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. A school shall not receive rewards if its dropout rate exceeds six (6) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for the biennium.

(4) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the target biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent novices shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by seven (7). The maximum allowable percent novice for each biennium shall be calculated as follows:
(a) Year 2002 = baseline percent novice minus the required novice reduction factor; (b) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by two (2); (c) Year 2006 = baseline percent novice minus the required novice reduction factor multiplied by three (3); (d) Year 2008 = baseline percent novice minus the required novice reduction factor multiplied by four (4); (e) Year 2010 = baseline percent novice minus the required novice reduction factor multiplied by five (5); (f) Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by six (6); and (g) Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by seven (7).

(5) A school shall be classified as a progressing school if the school's growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school's accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for Commonwealth school improvement funds and may be subject to a scholastic audit.

(7) In 2002, the highest scoring five (5) percent of all schools shall be designated as Commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate and novice novice requirements of this section. This calculation shall be based on the total accountability index of the school regardless of whether one (1), multiple, or no grades at which the norm-referenced test is administered are included. If not otherwise receiving rewards in recognition for growth, a Commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2004, a school shall not have declined in both of the two (2) previous biennia. The rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section 8(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section 8(5) of this administrative regulation shall earn one-half (1/2) share of rewards.

(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points, in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only one (1) time for meeting or passing each point. A school earning this reward and subsequently failing below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on where its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index.

(5) The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed one and three-fourths (1 3/4) percent of the amount of funds paid to certified personnel within Kentucky's public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the per share reward amount; however, a reward share shall not exceed $2,000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 9 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 156.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

(a) Meets goal: number of certified full-time equivalent (FTE) staff times three (3) shares;
(b) Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;
(c) Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and
(d) Pace setter: number of certified full-time equivalent (FTE) staff times one (1) share.

(6) Beginning with rewards issued at the close of the 1999-2000 school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based on the number of verified certified staff assigned to the school or combinations of schools earning the reward. A reward amount for part-time and itinerant staff shall be calculated based on the proportion of time spent in the school.

Section 10. School Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a school has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) measuring the percentage of students meeting or exceeding the state's proficient level of academic achievement on the state assessments. The starting points for each accountability level shall be the percentage of students at or above the proficient level who are in the school at the 20th percentile in the state, based on enrollment among all schools ranked by the percentage of students at or above the proficient level.

(2) For purposes of determining adequate yearly progress, a school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades and producing school level accountability statistics including:

(a) Percent proficient and above in reading and mathematics;
(b) Accountability indices;
(c) Graduation rates; and,
(d) Participation rates.

(3) These statistics shall be used to determine if a school has met adequate yearly progress as measured against the annual measurable objectives established in Section 10(1) of this administrative regulation.

(4) Meeting adequate yearly progress. Schools shall be determined to have made adequate yearly progress for a school year if:

(a) The school and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., met district annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbors" in 703 KAR 6:001;
(b) The school showed progress or met the criteria on the accountability index at the elementary and middle school accountability levels as defined in 703 KAR 6:001;
(c) The school demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 6:001; and
(d) Had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(5) No child left behind (NCLB) improvement school determination. A school shall be identified as a "NCLB improvement school" if for two (2) consecutive years the school fails to make adequate yearly progress in the same content area as defined in 703 KAR 5:001 - reading or mathematics.

(6) Reward or recognition. For a school meeting adequate yearly progress for two (2) consecutive years in both reading and mathematics, it shall receive a reward or recognition from the Department of Education as determined on an annual basis.

(7) Before identifying a school as a no child left behind improvement school and implementing consequences required by 20 U.S.C. 6301 et seq., the local school district shall provide the school with an opportunity to review the school-level data on which their presumed identification is based. Not later than thirty (30) days after the district provides the school with the opportunity to review such school-level data, the district shall make public a final deter-
mination on the status of the school with respect to the identification.

(8) Confidence intervals. A school shall be considered to have met the annual measurable objective in reading or mathematics if:
(a) The percent of students scoring proficient or above in a school meets or exceeds the annual measurable objective in reading or mathematics, or
(b) The annual measurable objective falls within the ninety-nine (99) percent confidence interval placed around the school's percent of students proficient and above.

(9) Students included in participation rates. A student enrolled in a Kentucky public school on the first day of the testing window for the school shall be included in the calculation of the participation rates for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(10) Students included in determining whether a school meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a school for a full academic year shall be included in the school's calculation of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.

(11) Annual Measurable Objectives in Reading and Mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics shall be as follows:

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Section 11. No Child Left Behind School Consequences. (1) Tier 1 consequences for no child left behind improvement schools. If a Title I school is identified as a no child left behind (NCLB) improvement school, the local school district shall provide parental notification with explanations, required in 20 U.S.C. 6301 et seq., including information that all students enrolled in the school have the option to transfer, at the district’s expense, to another public school operated and selected by the local school district that has not been identified as a school in improvement. The NCLB improvement school shall also write or revise its school plan.

(2) Tier 2 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of one (1) full year after being identified as an NCLB improvement school, the local district shall require that school to provide supplemental services as required by 20 U.S.C. 6301 et seq., and continue to provide services mandated in Section 11(1) of this administrative regulation.

(3) Tier 3 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of two (2) full years after being identified, the local district shall take corrective action as required by 20 U.S.C. 6301 et seq., and consistent with all relevant Kentucky statutes, and continue to provide services required in Section 11(1) and (2) of this administrative regulation.

(4) Tier 4 consequences for NCLB no child left behind improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of three (3) full years after being identified, the local district shall plan for alternative school governance required by 20 U.S.C. 6301 et seq., and continue to provide services required in Section 11(1), (2), and (3) of this administrative regulation. If adequate yearly progress in both reading and mathematics is not made four (4) years after being identified as a NCLB improvement school, the alternative governance plan shall be implemented.

Section 12. Duration of Consequences. If a school identified as a NCLB improvement school makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after the identification, the school shall no longer be identified as a NCLB improvement school and the school shall not be subject to federal consequences.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 150.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, March 18, 2004)

703 KAR 5:070. Procedures for the inclusion of special populations in the state-required assessment and accountability programs.

RELATES TO: KRS 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453,
158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 provides the Kentucky Board of Education with the
authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts. This administrative regulation establishes procedures for the inclusion of special student populations in the state-required assessment and accountability programs.

Section 1. Incorporation by Reference. (1) "Procedures for Inclusion of Special Populations in the State-Required Assessment and Accountability Programs," February 2004 [September 2003] (June 2002), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Assessment and Accountability, 18th Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: February 12, 2004
FILED WITH LRC: February 13, 2004 at 11 a.m.
CONTACT PERSON: Kevin M. Norland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, 500 Mero Street, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-8021.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, March 18, 2004)

703 KAR 5:120. Assistance for schools; guidelines for scholastic audit.

RELATES TO: KRS 158.6451, 158.6453, 158.6455, 158.782, 158.806
STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.6453, 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to adopt administrative regulations relating to assistance to improve teaching and learning for a school that has an index score that places it below the assistance line and relating to the guidelines for conducting scholastic audits. This administrative regulation establishes standards for assistance to schools and for conducting scholastic audits.

Section 1. [Definitions. (1) "Assistance line" means the unique line for a school that starts in the benchmark ending with the school year 2001-2002 at one (1) standard error of measurement below the school's baseline accountability index to a point that is one (1) standard error of measurement below eighty (80) on the accountability index scale in the benchmark ending with the school year 2013-2014. The calculated points defining this line shall be rounded to the nearest tenth. If a school's baseline is above eighty (80), the assistance line is a horizontal line at eighty (80) minus one (1) standard error of measurement.

(2) "In need of assistance" means the school's growth accountability index falls below its assistance point.

(3) "Level 1" means a classification assigned to a school that has an index score that places it in the highest one-third (1/3) of all schools below the assistance line.

(4) "Level 2" means a classification assigned to a school that has an index score that places it in the middle one-third (1/3) of all schools below the assistance line.

(5) "Level 3" means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

"Progressing" means the school's growth accountability index falls below its goal point and meets or exceeds its assistance point.

"Sample of schools" means a representation of schools, not to exceed five (5) percent, of those with an accountability index above the assistance line.

"Scholastic audit" means a comprehensive review of a school's learning environment, efficiency, and academic performance of students to determine the level of support necessary to continuously improve student academic performance.

"School classification" means the status of a school or school district, including "meets goal", "progressing", or "in need of assistance", based on measures of growth.

"School improvement plan" means a data-driven and research-based framework developed by the school which contains specific recommendations from the scholastic audit team for improving teaching and student learning and identifies priority needs for strengthening the school's instructional and organizational effectiveness.

"School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:

(a) The school's consolidated plan;
(b) State assessment results;
(c) Student achievement data;
(d) Portfolio writing analysis data;
(e) School survey data;
(f) The school report card;
(g) District technology inventory;
(h) School handbook and master schedule;
(i) School-based decision-making policies and meeting minutes;
(j) Teacher lesson plans;
(k) District evaluation plan;
(l) Curriculum alignment documents;
(m) Examples of student work;

(n) A listing of professional development activities.

"Standard error of measurement" means, for purposes of the assistance line or the goal line, the statistic derived from the baseline calculations taking into account appropriate sources of measurement error and number of students assessed.

"Standards and indicators for school improvement" means the evaluation tool used in the scholastic audit process to determine the appropriateness of the school's classification and to make recommendations to improve teaching and learning for inclusion in the existing consolidated school improvement plan.

Section 2. (1) A Level 1 school shall conduct a scholastic review and self-study facilitated by the district's professional development coordinator with assistance provided by Kentucky Department of Education (KDE) staff. The chairperson shall be appointed by the Commissioner of Education (KDE) in the chairperson's discretion in collaboration with the school principal and the other school council members, shall notify parents and interested community members of the findings and recommendations.
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of the review team. The findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(4) A Level 2 scholastic review and self study team:
(a) Shall use the "Standards and Indicators for School Improvement" to evaluate the school's learning environment, efficiency, and academic performance;
(b) Shall make recommendations to improve teaching and learning for inclusion in the existing comprehensive [consolidated] school improvement plan; and
(c) May review the district's certified employee evaluation plan and make recommendations regarding the implementation of the professional growth and evaluation plan and process used by the school.

Section 2, [3.] (1) A Level 2 school shall receive a scholastic review facilitated and chaired by a designee of the Commissioner of Education with assistance from the district's central office staff. The chairperson shall be responsible for:
(a) The notification of the school community and a process for written comments;
(b) The coordination of the site visitation;
(c) The facilitation of the process;
(d) The facilitation of a meeting with district staff prior to the audit visit.
(e) The drafting of the report;
(f) The delivery of the final report to the local school board members, superintendent, principal, and the school council members within three (3) weeks of completing the scholastic review; and
(2) [Beginning with the results of the 2000-2002 accountability cycle,] A Level 2 school may be eligible to receive Commonwealth school improvement funds. The school council shall decide whether to accept or decline Commonwealth school improvement funds. If the council chooses to decline, the principal shall notify the local board of education of the council's decision.
(3) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the review team. The findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.

(4) A Level 2 scholastic review shall:
(a) Use the "Standards and Indicators for School Improvement" to evaluate the school's learning environment, efficiency, and academic performance;
(b) Make recommendations to improve teaching and learning for inclusion in the existing comprehensive [consolidated] school improvement plan; and
(c) Review the district's certified employee evaluation plan and make recommendations regarding the implementation of the professional growth and evaluation plan and process used by the school.

Section 3, [4.] A Level 3 school shall receive education assistance from a highly skilled educator under KRS 158.782 and a scholastic audit. A Level 3 school shall be eligible to receive Commonwealth school improvement funds under KRS 158.805. In order for a Level 3 school to decline to accept Commonwealth school improvement funds, the approval of the school council shall be required and the local board of education shall be notified of the decision.

Section 4, [5.] Evaluation of school personnel in a Level 3 school shall address the following:
(1) The district's evaluation plan and process for certified staff shall be reviewed and recommendations made on the implementation of the evaluation plan and process used by the school;
(2) A person responsible for evaluating certified personnel, including the certified members of the audit team, shall have fulfilled the training requirements as described in KRS 156.101 and 704 KAR 3:345;
(3) [Beginning with the school year 2002-2003,] The qualified members of the audit team shall submit written recommendations for additional staff evaluations to be conducted by the certified administrator charged with evaluation. If additional evaluations are required, the certified administrator charged with evaluation, in collaboration with the assigned highly skilled educator, shall submit a progress report to the district and the KDE within six (6) months of the initial report. Based on the findings, under KRS 156.192, the Commissioner of Education may recommend to the local superintendent that:
(a) The principal, who is identified by the audit as in need of additional evaluation but who does not respond to the professional growth plan as identified in 704 KAR 3:345, be dismissed, demoted, or transferred; and
(b) A teacher, who is identified by the audit as in need of additional evaluation but who does not respond to the professional growth plan, be dismissed or transferred.

Section 5, [8.] (1) If a school is classified as a Level 3 school for two (2) consecutive biennia, a student attending the Level 3 school may transfer to a school with an accountability index above its assistance line within the district or if none is available, a school with an accountability index above its assistance line outside the district. No later than thirty (30) days before the start of the next school year the student shall submit the transfer request to the superintendent.
(2) The superintendent shall select the receiving successful school in the home district or make arrangements with a neighboring district with the student transfer to be effective beginning with the next school year after the school is classified as a Level 3 school for two (2) consecutive biennia. If two (2) districts cannot agree, the superintendent of the student's resident district shall request the Commissioner of Education to resolve the issue and make a decision on the placement of the student.
(3) The school district in which the student is enrolled shall retain the SEEK funding, and the student's resident district shall be responsible for all transportation costs incurred as a result of a student transferring.

Section 6, [7.] If a school is classified as Level 3, a scholastic audit team may request the Commissioner of Education to recommend to a local board of education the removal of a school council member under KRS 160.347.

Section 7, [8.] (1) Members of the scholastic audit team shall be selected and trained from a pool of candidates who have submitted an application to the Department of Education (KDE). The training shall include:
(a) Developing, implementing, and evaluating a comprehensive consolidated school improvement plan that communicates a clear purpose, direction and action plan focused on improved teaching and learning;
(b) Building capacity for school leadership at all levels that promotes instructional decisions resulting in active support for teaching and learning and sustained continuous improvement;
(c) Organizing the school to maximize use of all available resources to support high student and staff performance within a safe environment;
(d) Using time efficiently and effectively to maximize teaching and learning;
(e) Providing and supporting research-based, results driven professional development opportunities for all staff to improve staff and student learning;
(f) Building relationships and collaborative networks, open communication, and active engagement of all stakeholders;
(g) Attending to the evidence as to whether the individual needs of students are being met and assessing equitable access to the entire curriculum;
(h) Using resources effectively to eliminate barriers to learning and providing the appropriate support structures to meet the needs of all students;
(i) Using technology and other resources as an integral part of an effective, educational program to improve teaching and learning;
(j) Developing and learning how to assess an effective learning
community;
(k) Developing and implementing an effective, responsive curriculum that is rigorous, intentional, articulated, integrated and aligned to state standards established under KRS 158.645, 158.645(1), and 703 KAR 4:060;
(l) Developing and learning how to assess an instructional program that actively engages all students by employing varied research-based practices to improve academic performance;
(m) Developing and learning to utilize multiple evaluation and assessment strategies to monitor and modify instruction;
(n) Conducting professional growth and evaluation of certified personnel;
(o) Assessing and advising compliance with Kentucky's statutory and regulatory requirements for schools and school districts; and
(p) Understanding and assessing the fiscal relationship between schools and districts with respect to resource allocation and integration; and
(q) Understanding strategies for achievement gap reduction.
(2) The scholastic audit team shall consist of the following members:
(a) A highly skilled educator selected under KRS 159.782;
(b) An active or retired teacher who has not been under full-time contract in the district in which the school is being audited;
(c) An active or retired principal or other school-level administrator who has not been under full-time contract in the district in which the school is being audited;
(d) An active or retired district level administrator who has not been under full-time contract in the district in which the school is being audited;
(e) A parent or legal guardian who has or has had a school-aged child and resides outside the district which includes the school being audited; and
(f) An active or retired university faculty member.
(3) The Commissioner of Education shall engage the highly skilled educator with administrative certification and experience, an experienced certified administrator member of the audit team, or a similarly qualified state-designated agent to serve as chairperson of the scholastic audit team. The chairperson shall be responsible for:
(a) The notification of the school community and a process for written comments;
(b) The coordination of the site visitation;
(c) The facilitation of the process;
(d) The facilitation of a meeting with district staff prior to the audit visit;
(e) The drafting of the report; and
(f) The delivery of the final report to the KDE, local school board members, superintendent, principal and the school council members.
(4) Prior to the scholastic audit, the school principal, in collaboration with the other members of the school council, shall prepare a school portfolio for use in creating a profile of the strengths and limitations of the school's instructional and organizational effectiveness. Evidence as to the current levels of instructional and organizational effectiveness shall be indicated in the identification of priorities for school improvement in the comprehensive school improvement [consolidated] plan.
(5) A school's learning environment, efficiency, and student academic performance shall be evaluated by using the scholastic audit team using "Standards and Indicators For School Improvement".
(6) The scholastic audit team shall:
(a) Make recommendations for assistance;
(b) Share a draft report with the school faculty and school council members prior to the scholastic audit team's departure; and
(c) Submit a final exit report, within three (3) weeks following the site visit, to the KDE, local school board members, superintendent, principal, and the school council members, regarding:
1. The appropriateness of the classification based upon audit findings;
2. Specific recommendations to improve teaching and learning for inclusion into the existing comprehensive [consolidated] school improvement plan;
3. The evaluation of school-based decision-making council decisions in the critical instructional areas under KRS 160.345(2)(d)(i) and (3)(c);
4. The evaluation of the effectiveness of the principal as the instructional leader, in the areas of efficiency, learning environment, and academic performance;
5. The identification of certified staff, including administrators, needing further performance evaluations to the primary evaluator as defined in KRS 156.101(6)(c);2;
6. The assistance and resources required to revise the consolidated school improvement plan; and
7. The identification of priorities and strategies, which the school or district may adopt to support the improvement effort.
(7) To involve stakeholders in identifying priorities for school improvement planning, the school principal, in collaboration with the other school council members, shall notify parents and interested community members of the findings and recommendations of the audit team. The audit findings shall be presented and discussed on the agenda of the next scheduled school council meeting and at a local board of education meeting.
(8) School improvement plans shall be based upon:
(a) Recommendations from the audit team's exit report for improving teaching and learning that shall be incorporated into the existing comprehensive school improvement [consolidated] plan submitted to the district and the KDE; and
(b) Specific, research-based standards and indicators of quality as found in "Standards and Indicators for School Improvement" so all school and district consolidated plans are linked to the critical elements of the scholastic audit process and focused on improving student academic performance.
(9) The process for amending a school plan shall be a local decision, beginning with the approval by the school council.
(10) An amendment to a school plan shall be shared at the district level so district personnel can determine if the amendment results in a need for reallocation of discretionary resources and an adjustment or formal amendment to the district plan.

Section 8. [49.] (1) A principal of a school classified as a Level 3 shall participate in at least twelve (12) hours of professional development activities which may include opportunities for coaching and mentoring. The focus shall be on building leadership skills in student academic performance, learning environment, and organizational efficiency as measured by the "Standards and Indicators for School Improvement". The participation shall occur within twelve (12) months of being classified as a Level 3 school. The professional development activities shall be designed and delivered by the KDE and the local district in accordance with KRS 156.101.
(2) A principal of a school classified as a Level 1 or Level 2 shall participate in at least twelve (12) hours of professional development activities which may include opportunities for coaching and mentoring. The focus shall be on building leadership skills in student academic performance, learning environment, and organizational efficiency as measured by the "Standards and Indicators for School Improvement". The participation shall occur within twelve (12) months of being classified as a Level 1 or Level 2 school. The professional development activities shall be designed and delivered by the KDE or the local district in accordance with KRS 156.101.

Section 9. [49.] The KDE shall conduct scholastic audits in a random sample of schools.

(2) This document may be inspected, obtained, and copied at Office of Leadership and School Improvement, Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).
GENE WILHOIT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003, at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, March 18, 2004)

703 KAR 5:130. School district accountability.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 158.029, 158.070, 158.6453, 158.6455
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 authorizes the Kentucky Board of Education to promulgate an administrative regulation establishing a local school district accountability program. This administrative regulation establishes eligibility for district rewards, and it establishes procedures for determining assistance and other consequences for local school districts having schools in need of assistance as defined in 703 KAR 5:020.

Section 1. Required Participation in the National Assessment of Educational Progress. If a district is selected by the U.S. Department of Education for its designated contract to participate in the state National Assessment of Educational Progress in reading, mathematics, and science at grades 4 and 8, the district shall participate fully. Definitions. (1) “District evaluation team” means one (1) or more school district audit teams as established in 703 KAR 5:110.

(2) “Level 3” means a classification assigned to a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line.

Section 2. (1) Dropout data generated at an A2-A6 school shall be attributed to the school district in which the A2-A6 school is located, unless the district exercises the option in subsection (2) of this section.

(2) If a district where an A2-A6 school is located can identify the A1 school which would have served the student if the student had not required services offered by the A2-A6 school, then the dropout data regarding that student shall be assigned to the A1 school. If a school district exercises this option, the district shall accurately report specific student dropout data to the district containing the accountable A1 school to be included in the nonacademic data reported to the Department of Education. If, after reasonable effort, the district cannot determine the prior school district of accountability, the district may request that the Kentucky Department of Education assign the data to the proper district (or regional data).

Section 3. A local school district in which all schools are classified as progressing or meets goal under 703 KAR 5:020 and meets the dropout criteria established for schools in order to earn rewards in 703 KAR 5:020 shall be declared an exemplary growth district and shall receive rewards as determined by the Kentucky Board of Education.

Section 4. A district meeting adequate yearly progress in both reading and mathematics for two (2) consecutive years shall receive a reward or recognition as determined on an annual basis by the Department of Education.

Section 5. (1) A local school district shall be held accountable for providing its schools appropriate instructional leadership and instructional support.

(2) A local school district containing a school that is classified as Level 3 that was not classified as Level 3 the previous accountability cycle shall modify its district consolidated plan by including a specific support plan designed to assist each Level 3 school in improving its academic achievement. The plan shall address each of the areas listed in Section 5 of this administrative regulation and shall be sent to the local board of education members and to the Level 3 school council members or, if none exists, the principal, for approval.

(3) If a school is classified as Level 3 for two (2) or more consecutive accountability cycles, the school district shall be subject to a district audit conducted by a district evaluation team. The team shall review each of the areas outlined in Section 5 of this administrative regulation and the district’s implementation of the previous accountability cycle’s school support plan. The district audit team shall also evaluate the district as to district responsibilities using “Standards and Indicators for School Improvement”, which is incorporated by reference in 703 KAR 5:120.

Section 6. [6.] A local school district shall address the following areas in its school support plan:

(1) Instructional leadership shall include evidence that the local school district provides:

(a) Instructional staff access to curriculum-related materials and training necessary to use curricular and data resources relating to the goals for Kentucky public schools. The district shall include evidence that it equitably and effectively distributes professional development resources and has designed a district professional development program based on student achievement data; and

(b) A professional development planning process that results in training activities provided for the certified staff within the goals established in KRS 158.645 and the academic expectations established in 703 KAR 4:080 and the school’s performance trends, which include state assessment data and other student achievement performance measures identified by the district;

(c) A structure for instructional improvement including evidence that the local school district is actively supporting a systematic, school improvement planning process involving appropriate stakeholder groups, including parents, business representatives, and the general public, and the district is using all available and appropriate data;

(2) Financial services and support shall include evidence that district resources have been distributed to each school equitably and consistently in accordance with the requirements of 702 KAR 3:24;

(3) Safe and secure instructional facilities shall include evidence of adequate and equitable maintenance of facilities. In addition, safe and secure instructional facilities shall include evidence that the school district has reviewed and assisted in the implementation of the school-based safety plans dealing directly with issues related to discipline and a safe school environment; and

(4) An effective certified employee evaluation program shall include evidence that the evaluation of the principal and certified staff has been implemented in a regular and timely manner consistent with the district’s approved evaluation plan established under KRS 156.101 and that the evaluation process focuses on improving instruction.

Section 7. [6.] The district evaluation team shall submit a report, including its recommendations, to the Commissioner of Education, the district superintendent, and the local board of education within two (2) weeks of its review. The report shall be presented by a member of the district evaluation team at a local board of education meeting with opportunity for public comment. The district evaluation team recommendations may include the following:

(1) No additional action is needed because the district is effectively implementing its school support plan which reflects strategies for meeting the needs of the Level 3 school;

(2) Revisions to the school support plan are needed even though the district has effectively implemented its plan;

(3) Revisions in implementation procedures are needed as implementation of the school support plan is not effective; or

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(4) A management audit as provided in KRS 158.765 and 703 KAR 3:205 is needed because the district has not effectively developed or implemented its school support plan.

Section 8. District Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a district has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) as described in 703 KAR 5:020.

(2) For purposes of determining adequate yearly progress, a local school district shall be held accountable based on an aggregated average of the performance of elementary, middle, and high school students who have been enrolled in the district for a full academic year and producing district level accountability statistics including:

(a) Percent proficient and above in reading and mathematics;
(b) Accountability indices;
(c) Graduation rates; and
(d) Participation rates.

These statistics shall be used to determine if a district has met adequate yearly progress as measured against the annual measurable objectives established in 703 KAR 5:020, Section 10(1).

(3) Meeting adequate yearly progress, a district shall be determined to have made adequate yearly progress for a school year if:

(a) The district and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., met the annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 5:001;

(b) The district showed progress or met the criteria on the accountability index at the elementary and middle school accountability levels as defined in 703 KAR 5:001;

(c) The district demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5:001; and

(d) Had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(5) No child left behind (NCLB) improvement district determination. A district shall be identified as a "NCLB improvement district" if for two (2) consecutive years the district fails to make adequate yearly progress in the same content area, as defined in 703 KAR 5:001 reading or mathematics.

(6) Confidence intervals. A district shall be considered to have met the annual measurable objective in reading or mathematics if:

(a) The percent of students scoring proficient or above in a district meals or exceeds the annual measurable objective in reading or mathematics;

(b) The annual measurable objective falls within the ninety-nine (99) percent confidence interval around the district's percent of students proficient and above.

(7) Students included in the participation rates. A student enrolled in Kentucky public school district on the first day of the testing window at each accountability level shall be included in the calculation of the district's participation rate as calculated for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(8) Students included in determining whether a district meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a district for a full academic year shall be included in the district calculations of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.

(9) Annual measurable objectives in reading and mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics for a district shall be those established in 703 KAR 5:020, Section 10(1).

(10) Initial consequences for NCLB improvement districts. If a district is identified as an NCLB improvement district, the district:

(a) Shall, not later than three (3) months after being identified, develop or revise a district improvement plan. The district shall implement the plan expeditiously, but not later than the beginning of the next school year after the school year in which the district was identified as a NCLB improvement district;

(b) May request technical assistance from the Kentucky Department of Education; and

(c) May be subject to corrective action taken by the Kentucky Department of Education as required by 20 U.S.C. 6301 et seq.

(11) Subsequent consequences for NCLB improvement districts. If a district is identified as an NCLB improvement district and fails to make adequate yearly progress by the end of the second full school year after the identification, the district shall be subject to corrective action taken by the Kentucky Department of Education as required by 20 U.S.C. 6301 et seq.

(12) Duration of consequences. If a district identified as a NCLB improvement district makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after identification, the district shall no longer be identified as a NCLB improvement district and the district shall not be subject to federal consequences.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOT, Commissioner
HELEN W. MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003
FILED WITH LRC: December 12, 2003 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(As Amended at EAARS, March 18, 2004)


RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.

STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a system to create and implement a statewide assessment program. This administrative regulation establishes test administrative procedures.

Section 1. Test Administration Procedures. (1) Retained students. A student retained in a grade in which state-required assessments are administered shall participate in the assessments for that grade again and shall continue to be included in all accountability calculations. A high school senior taking more than four (4) years to complete high school shall repeat grade twelve (12) state-required assessments.

(2) Double or multiple grade promotions and state-required assessments. If a student is double promoted or otherwise skips a grade in the normal progression of grades primary through twelve (12), the student shall take the state-required assessments associated with the grade being skipped. A student shall be included in participation rate calculations of the current grade placement of the student at the beginning of the testing window.

(3) Norm referenced test requirements and end of primary students.

(a) An exiting primary student shall take the nationally norm-referenced assessment and any additional assessments that may be required as a part of the Commonwealth Accountability Testing System.

(b) If a school is certain that a student will continue in the primary program and the student's parents have been informed, then the student shall not be required to take the nationally norm-referenced assessment or other state-required assessment components until the year the student exits the primary program.

(c) If school personnel are not sure that a student will remain in
5. Whether the student participated in state-required assessments.
   (b)1. For purposes of calculating a school's academic indices in the state dimension and for determining adequate yearly progress in the federal dimension, each school shall be held accountable based on an aggregate average of the academic performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades; and each district shall be held accountable based on an aggregate average of the academic performance of the elementary, middle, or high school students who have been enrolled in the district for a full academic year in the accountability grades.
   2. If a school or district has a different announced testing window and a student is enrolled for more than one (1) school or district during this period, the student shall be attributed for state and federal academic accountability calculations purposes to the school or district having the earliest announced testing window.
   3. If the student moves out of state or to a private school before state-required assessments can be completed in the school or district's announced testing window, the student shall be excluded from state and federal academic accountability calculations.
   (11) Enrolling transient students. A school receiving a transfer student from another school just prior to or during the testing window shall not deny or delay enrollment of that student without legally-valid reasons.
   (12) Adjustments to testing window due to natural disasters. A district or school that experiences a natural disaster or community disruption during the chosen testing window option may request an adjustment to the testing window. The request shall be made by email or letter to the Kentucky Department of Education Office of Assessment and Accountability.

Section 2. Portfolios. (1) Writing and alternate portfolio completion date. A student entry into and all substantive work on the writing and alternate portfolio shall be completed on or before the first day of the testing window in the school where the student is enrolled. At the discretion of the district, this date may be set earlier in the school year. A school using a modified or alternative block scheduling may follow a different routine for portfolio development if the school submits a request to the Kentucky Department of Education, Office of Assessment and Accountability, and it is approved.
   (2) Portfolio scoring. Before scoring the alternate or writing portfolio, a teacher shall participate in annual training by the Kentucky Department of Education or the department's designee. If a school does not participate in this scoring training, the school shall be responsible for securing the scoring services of appropriately-trained portfolio scorers.
   (3) Writing portfolio scoring timelines and postadministration assessment administration activities. Local scoring of writing portfolios and other local logistics required after test administration shall be completed by the date set by the local district assessment coordinator. The local district shall establish these schedules so that all materials are shipped to Kentucky's assessment contractor by the dates established annually by the Kentucky Department of Education.
   (4) Portfolio rescoring and audit procedures. A school and district shall cooperate fully in alternate and writing portfolio monitoring and auditing as implemented by the Kentucky Department of Education.
   (5) Alternate and writing portfolios storage. A school shall store its alternate and writing portfolios in a location that is accessible to the district assessment coordinator or the district assessment coordinator's designee. A portfolio shall be stored until the portfolio no longer impacts data on a potential appeal of a performance judgment.

This is to certify that the state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: December 12, 2003

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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Office of State Fire Marshal
(As Amended at ARRS, April 14, 2004)

815 KAR 35:050. Licensing of electrical contractors, electricians, and master electricians.

RELATES TO: KRS 227A.010, 227A.080, 227A.080, 227A.100
STATUTORY AUTHORITY: KRS 227A.040(1), (6), 227A.060, 227A.100(1)


Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.080 [Section 8 of HB 115] shall:
(1) Complete an application as required by [described in]
Section 2 of this administrative regulation;
(2) Pay the application fee required by Section 3 of this administrative regulation; and
(3) Provide verifiable evidence of experience by:
(a) Submitting a copy of a current electrical contractor's, master electrician's or electrician's license issued by a Kentucky city, county, urban-county or consolidated local government;
(b) Submitting a copy of a current license issued by another state or jurisdiction whose standards have been determined by the Office of Housing, Buildings and Construction to be substantially equal to those required by KRS 227A.080 [Section 8 of HB 115] or
(c) Submitting verification of the required years of experience as an electrical worker in a form specified in Section 4 of this administrative regulation.

Section 2. Application Requirements. The applicant shall complete an application form, Form SFM-EC-1, Electrical License Grandfather Application, which shall include the following information:
(1) Applicant's name;
(2) Applicant's home address;
(3) Applicant's business address;
(4) Applicant's home and business telephone numbers;
(5) Applicant's date of birth;
(6) Applicant's Social Security number [and/or] employer identification number;
(7) Applicant's e-mail address;
(8) Licenses applied for;
(9) A listing of the applicant's experience in the electrical industry, including business name and address, job title and supervisor's name;
(10) A listing of all approved training or apprenticeship programs the applicant has completed;
(11) A statement confirming that the applicant is not in default on any educational loan guaranteed by the KHEAA in accordance with KRS 164.7720;
(12) For master electrician or [and] electrician licenses, a passport sized photograph of the applicant;
(13) For electrical contractor licenses, the name and license number of the master electrician who will be affiliated with the applicant; and
(14) For electrical contractor licenses, the name of the insurer providing the applicant's liability and workers' [worker's] compensation coverage and the policy number of each coverage.

Section 3. Application and Renewal Fees. (1) The application fee for an electrical contractor's license shall be $200.
(2) The application fee for a master electrician's license shall be $100.
(3) The application fee for an electrician's license shall be fifty (50) dollars.
(4) Application fees shall not be refundable.
(5) License renewal fees shall be the same as the relevant application fee.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as an electrical contractor, master electrician or electrician.
(2) Verification shall be submitted in the form of:
(a) Tax returns or other official tax documents which indicate the applicant's occupation or the nature of the applicant's business activities, including but not limited to Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;
(b) Copies of business licenses issued by a county or municipal government which does not issue electrical contractor's, master electrician's or electrician's licenses if the business license indicates the applicant operated as an electrical contractor or worker;
(c) A sworn affidavit, on the affiant's letterhead, certifying that the author of the letter has personal knowledge that the applicant has operated as an electrical contractor from at least one (1) of the following:
   1. An electrical workers union;
   2. An electrical industry organization, including but not limited to the National Electrical Contractors Association, the Association of Builders and Contractors, the Associated General Contractors, the International Association of Electrical Inspectors, or the Independent Electrical Contractors Association;
   3. A certified electrical inspector;
   4. A Kentucky licensed insurance agent who has provided liability or other business coverage for the applicant's electrical contracting business;
   5. A Kentucky county judge executive, state representative or state senator.
(d) For licensure as a master electrician or an electrician, a sworn affidavit, on the affiant's letterhead, certifying that the author of the letter has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one (1) of the following:
   1. An electrical workers union;
   2. A certified electrical inspector;
   3. An employer who employed the applicant as an electrician or a master electrician;
   4. A Kentucky licensed insurance agent who has provided liability or other business coverage for the applicant's electrical contracting business;
   5. A Kentucky county judge executive, state representative or state senator.
(e) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involved electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Appeal Procedure. (1) Applicants denied a license may appeal the decision of the Office of Housing, Buildings and Construction to the Electrical Advisory Board. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied.
(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Electrical Advisory Board.
(3) The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Electrical Advisory Board, which may adopt it, amend it or substitute its own decision based upon the evidence.
Section 6. Proof of Insurance. (1) Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by providing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an authorized Kentucky insurer or other insurer certified by the Kentucky Department of Insurance. 

(2) The applicants shall provide proof of workers' compensation insurance by:
(a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider; or
(b) [by providing] A letter certifying that the applicant is not required to obtain workers' compensation coverage.

(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Office of Housing, Buildings and Construction if:
(a) A policy is [in the event their policies are] cancelled, terminated, or nonrenewed; or
(b) The policy limits are lowered.

(4) Electrical contractors shall [have a duty to] advise the Office of Housing, Buildings and Construction of any change in their insurance coverage, including cancellation or termination of any policy or any change in the insurer providing the coverage. [A licensee's] failure to notify the Office of Housing, Buildings and Construction of a change in liability or worker's compensation coverage shall be grounds for license revocation, suspension or other disciplinary action.

Section 7. Renewal Requirements. (1) Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships or business entities without a birth month, the Office of Housing, Buildings and Construction shall issue a renewal month on a rotating basis.

(2) The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to twenty-three (23) months and may charge a pro rata license renewal fee to reflect the added term of the initial license. The pro rata license renewal fee shall [may] be refundable.

(3) An initial license shall not be for a term of longer than one (1) year plus sufficient months to reach the applicant's next birth month or renewal month.

Section 8. Pending License. (1) Upon receipt of an application from an applicant, or portion of an application from an applicant or a local government acting on behalf of an applicant, the Office of Housing, Buildings and Construction may issue the applicant a pending license.

(2) The pending license shall be deemed to be the license required by KRS 237A.020.

(3) [If] This issuance of a pending license shall not create a presumption that the applicant will receive, is entitled to, or has a right to a permanent license.

(4) Issuance of a pending license shall [does not waive or diminish the Office of Housing, Buildings and Construction's authority to deny or refuse to issue a permanent license to any applicant.

(5) All pending licenses shall expire upon issuance of a permanent license, the Office of Housing, Buildings and Construction's decision to deny a permanent license or July 15, 2004, whichever is earliest.

Section 9. Inactive License Status. (1) An applicant may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license if the [while their] license is inactive.

(2) An electrical contractor license in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with workers' compensation laws.

(3) Certified electrical inspectors may be licensed as an electrical contractor, master electrician or electrician, but shall maintain that [any] license as inactive while having an active [their] electrical inspector certification is active.

(4) Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation [Material Incorporated by Reference. (1) The following material is incorporated by reference.]


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40621-5405, [between 8 a.m. and 4:30 p.m.] Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS J. LANGFORD, Executive Director
LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY:
FILED WITH LRC: February 4, 2004 at 9 a.m.
CONTACT PERSON: Frank L. Dampey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40621-5405, phone (502) 573-0365, fax (502) 573-1057.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(As Amended at ARRS, April 14, 2004)

902 KAR 2:055. Immunization data reporting and exchange.

RELATES TO: KRS 158.035, 211.090, 211.180, 214.032-214.035, 45 C.F.R. 164.510, 164.512(b), 164.514(b), 26 CFR 1.6011, 120 I.A.C. 73-03, 45 C.F.R. 164.512(b), Federal Health Insurance Portability and Accountability Act (HIPAA), permits disclosure of protected health information (PHI) to local and state public agencies for public health activities and purposes without written authorization of the individual. Vaccinations to prevent disease are a core public health function. Reporting vaccination status constitutes infectious disease control and surveillance. This administrative regulation establishes requirements for reporting immunization results in schools, preschools, and day care facilities and permits recording and exchange of immunization data.

Section 1. Definitions. (1) "Public health entity" means health care providers, health insurers, public and private elementary and secondary schools, childcare facilities, preschools [preschool], public or private postsecondary educational institutions, and state and local health departments which are involved in the collection, recording, and exchange of immunization information for public health purposes.

(2) "Public health interest" means participation in core public
health functions such as surveillance, data collection, vaccination, vaccination certification, or prevention of communicable diseases for the protection of the public's health and safety.

Section 2. Immunization Reporting. (1) Day care centers, head start programs, kindergartens and public and private elementary and secondary schools shall submit to the local health department in their area immunization results on the Commonwealth of Kentucky School/Facility Annual Immunization Survey. (2) The annual [day-care] survey shall include the number of:
(a) Students in the grade surveyed;
(b) Missing immunization records;
(c) Religious exemptions;
(d) Medical exemptions; and
(e) Children who have received age-appropriate immunizations.

Section 3. Immunization Data Exchange. (1) A public health entity may record and exchange immunization data, without authorization from the patient or the patient's parent or guardian, if the patient is a minor, if the person requesting the data provides health related or educational services on behalf of the patient or has a public health interest.
(2) Immunization data may be recorded and exchanged electronically via an immunization registry.
(3) Immunization data that may be exchanged shall include:
(a) Patient's name;
(b) Patient's address;
(c) Date of birth;
(d) Gender;
(e) Social Security number;
(f) Medicaid number;
(g) Birth state;
(h) Birth County;
(i) Mother's name;
(j) Mother's maiden name;
(k) Mother's date of birth;
(l) Father's social security number;
(m) Father's name;
(n) Father's date of birth;
(o) Guardian's name;
(p) Date vaccines were administered;
(q) Vaccine type;
(r) Vaccine lot number;
(s) Vaccine manufacturer; and
(u) Vaccine contraindications or adverse reaction indications.
(4) This section shall apply to immunization data regardless of when the immunizations occurred or the medium used to collect and exchange the data.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Commissioner's Office, Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

NICHOLAS Z. KAFOGILIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: January 12, 2004
FILED WITH LRC: January 12, 2004 at 4 p.m.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 5:034. CAP grant student eligibility.

RELATES TO: KRS 164.744(2), 164.753(4), 164.7535
STATUTORY AUTHORITY: KRS 164.748(4), 164.753(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785.
KRS 164.753(4) requires the authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky. This administrative regulation establishes student eligibility requirements for the college access program.

Section 1. In order to qualify for disbursement of a college access program grant, a student shall:

(1) Be a resident of Kentucky;
(2) Be enrolled at an educational institution as at least a part-time student as determined by the educational institution, in an eligible program of study and have not previously earned a first baccalaureate or professional degree;
(3) Demonstrate financial need in accordance with 11 KAR 5:120 through 11 KAR 5:145 for CAP grant assistance;
(4) Have remaining KHEAA grant limit.

(a) A student enrolled as a full-time student in each academic term of a two (2) year eligible program of study shall be limited to five (5) semesters of CAP grant program eligibility.
(b) A student enrolled as a full-time student in each academic term of a four (4) year eligible program of study shall be limited to nine (9) semesters of CAP grant program eligibility (including any KHEAA grant limit used in a two (2) year eligible program of study);
(5) Not receive financial assistance in excess of need to meet educational expenses;
(6) Maintain satisfactory progress in an eligible program of study according to the published standards and practices of the educational institution at which the student is enrolled;
(7) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 and to any educational institution, except that inability for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee;
(8) Be a citizen of the United States or an eligible noncitizen;
(9) Be receiving at least part-time [full-time] credit at an educational institution in an eligible program of study and paying at least part-time [full-time] tuition and fees to that institution, if the student is studying abroad or off-campus; and
(10) Have been eligible to receive a CAP Grant in the preceding year, if the student is enrolled in an equivalent or equivalent program of study, as defined by the Council on Postsecondary Education.

MARcia CARPENTER, Chair
APPROVED BY AGENCY: February 5, 2004
FILED WITH LRC: March 22, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, May 21, 2004 at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, May 14, 2004, five workdays 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. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Morgan

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes student eligibility requirements for the College Access Program.
(b) The necessity of this administrative regulation: KRS 164.748(4) requires the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(4) requires the Authority to promulgate administrative regulations pertaining to grants. KRS 164.7535 authorizes the Authority to provide grants to assist financially needy part-time and full-time undergraduate students to attend educational institutions in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes eligibility requirements for the College Access Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that students meet certain criteria for eligibility to receive CAP grant funds.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(2) If this is an amendment to an existing administrative regulation, the amendment is necessary to allow students who are enrolled only part time to receive a CAP grant.

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(e) Initially: The amendment merely changes eligibility requirements relative to CAP grant eligibility. There will be no cost associated with this amendment. The amendment will not result in more grants being awarded or in additional administrative expense. Award of grants is made among eligible students and grant funds are limited so that awards are not made to all eligible students.

(6) On a continuing basis: Came as (6) above.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Grants for students under the College Access Program and the Kentucky Tuition Grant Program are funded from net lottery revenues transferred to the Authority for grant and scholarship programs, and administrative costs are borne by the Authority through receipt of the Authority.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation does not establish any fees, nor does this administrative regulation directly or indirectly increase any fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not applied to the amendment of this administrative regulation. The concept is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

11 KAR 18:010. Robert C. Byrd Honors Scholarship Program


STATUTORY AUTHORITY: KRS 164.744(4), 164.748(3), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-36, 1070d-37, 1070d-38, 1070d-39, NECESSITY, FUNCTION, AND CONFORMITY: 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41, require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program in Kentucky.

Section 1. Definitions. (1) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date.

(2) "Authority" is defined in KRS 164.740(1).

(3) "Award year" means the period of time from July 1 of one (1) year through June 30 of the following year.

(4) "Eligible student" is defined in KRS 164.740(7).

(5) "Federal act" is defined in KRS 164.740(9).

(6) "High school" means a school located within or outside of the commonwealth enrolling students for secondary school instruction that is:

(a)Operated by a state; or

(b) A private, parochial, or church secondary school that has been recognized as accredited, or voluntarily complying with accreditation standards, by one (1) of the fifty (50) state departments of education or one (1) of the seven (7) independent regional accrediting associations.

(7) "High school graduate" means an individual who receives:

(a) A high school diploma;

(b) A General Education Development (GED) Certificate; or

(c) Any other evidence recognized by the commonwealth as the equivalent of a high school diploma.

(8) "Participating institution" is defined in KRS 164.740(15).

(8) "SAT score" means the composite score achieved on the Scholastic Aptitude Test at a national test site on a national test date.

(9) "Scholar" means an individual who is selected as a Byrd Scholar.

(10) "Secretary" is defined in KRS 164.740(22).

Section 2. Eligibility Criteria. (1) Initial eligibility. An individual shall meet the following criteria to be eligible to be selected as a scholar. Initial eligibility is governed by 34 C.F.R. 654.40, 58 FR 42260, effective September 22, 1993, adopted without change.

(2) Continued eligibility. A scholar shall meet the following criteria to remain eligible to receive additional awards under this program for subsequent award years. Continued eligibility is governed by 34 C.F.R. 654.51, 58 FR 42269, effective September 22, 1993, adopted without change.

Section 3. Initial Application Procedures. Applications submitted by individual students shall not be accepted. In order for an eligible student to be considered for an award under this program:

1. The eligible student shall not have applied for consideration in a prior year; and

2. (a) For high school seniors, the eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15 on the Robert C. Byrd Honors Scholarship Program 2004-2005 Application form. The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. A certified transcript showing the cumulative grade point average for seven (7) semesters of high school;

2. An official ACT score or SAT score;

3. A high school guidance counselor's recommendation, not exceeding fifty (50) words, pertaining to the student's promise of continued academic achievement; and

4. A listing of honors, activities, and community service performed during high school; or

(b) For a GED recipient, a GED coordinator shall nominate the eligible student, and shall submit to the authority a completed application by June 30 [February 15 on the Robert C. Byrd Honors Scholarship Program 2004-2005 Application (for GED Recipients) form. The application shall be accompanied by the following supporting documentation pertaining to the eligible student:

1. An official General Education Development score certification; and

2. The GED coordinator's recommendation, not exceeding fifty (50) words, pertaining to the student's promise of continued academic achievement.

Section 4. Nomination Procedures. Each participating high school shall select and submit applications as follows:

1. Number of nominations per school. A participating high school shall submit nominations according to the following guidelines:

(a) High schools with enrollments of 1,500 or more may nominate a maximum of five (5) applicants;

(b) High schools with enrollments of 1,000-1,499 may nominate a maximum of four (4) applicants;

(c) High schools with enrollments of 500-999 may nominate a maximum of three (3) applicants; and

(d) High schools with enrollments of less than 500 may nominate a maximum of two (2) applicants.

2. A participating high school shall nominate only eligible students who:
(a) Have a minimum:
1. ACT score of twenty-three (23); or
2. SAT score of 1060; and
(b) Have a minimum 3.5 grade point average for seven (7) semesters of high school.
(c) A GED coordinator shall nominate only eligible students who have a minimum GED score of 2700.

Section 5. Selection Procedures. (1) Applications shall be reviewed to ensure compliance with the requirements set forth in Sections 2, 3, and 4 of this administrative regulation.
(2) The authority shall sort acceptable applications according to the six (6) congressional districts in order to ensure proportional distribution.
(3) The authority shall evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state.
(4) At least one (1) scholar shall be selected among the GED recipients.
(5) A scholar shall be selected from eligible applicants without regard to:
   (a) The applicant’s race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need;
   (b) Whether the scholar attended a high school located within or outside of the commonwealth; or
   (c) Whether the participating institution that the scholar plans to attend is public or private or is within or outside the commonwealth.
(6) A selected scholar shall agree in writing that he/she shall repay to the authority the total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority.

Section 6. Notification Procedures. The authority shall notify eligible students, tentatively selected as scholars, of their status within forty-five (45) days after the application submission deadline.

Section 7. Award Amount. (1) The amount of the annual award shall be governed by 34 C.F.R. 654.50, 58 FR 42669, effective September 25, 1993, and 34 C.F.R. 654.51(b), 58 FR 42669, effective September 25, 1993, adopted without change.
(2) A scholar shall receive an aggregate maximum of $6,000 over four (4) years if he or she maintains eligibility.

Section 8. Disbursements. (1) The first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student’s total cost of attendance.
(2) The award shall be paid in at least two (2) disbursements in the amount of:
   (a) One-half (1/2) in the fall term; and
   (b) One-half (1/2) in the spring term.
(3) The warrant shall be made payable to the scholar, but shall be sent to the school for delivery to the scholar.
(4)(a) Except as provided in paragraph (b) of this subsection, the award shall be utilized within twelve (12) months of the time of initial award.
(b) The authority executive director may authorize a postponement of the award utilization.
   1. The postponement shall be for up to twelve (12) additional months from the date the scholar:
      a. Otherwise would have enrolled in the institution after the scholarship award was made; or
      b. Interrupts enrollment
   2. A postponement shall be granted only if:
      a. There is sufficient good cause; and
      b. The scholar requests in writing, before the payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment.
   (c) A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (b) of this subsection shall not be eligible to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution.
   (d) The authority may extend the twelve (12) month suspension period without terminating the scholar’s eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the twelve (12) month suspension is due to exceptional circumstances beyond the scholar’s control or necessary for the scholar to meet a commitment.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The “Robert C. Byrd Honors Scholarship Program 2004-2005 Application”, November 2003, and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky High School Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The application shall be available on the authority’s website, www.KHEAA.com.

MARCIA CARPENTER, Chair
APPROVED BY AGENCY: February 5, 2004
FILED WITH LRC: March 22, 2004 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, May 21, 2004, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, May 14, 2004, five workdays 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. 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person CONTACT PERSON: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 799, Frankfort, Kentucky 40602-0799; phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Michael Morgan
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program.
(b) The necessity of this administrative regulation: Title IV, Part A, Subpart 6 of the federal act, as amended, 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the Secretary to make grants to states to provide scholarships to outstanding high school graduates who show promise of continued excellence. 20 U.S.C. 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41, require the authority, as the state agency designated to receive the grant to establish criteria and application procedures for the selection of eligible scholars for the Robert C. Byrd Honors Scholarship Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Title IV, Part A, Subpart 6 of the federal act, as amended, 20 U.S.C. 1070d-31 et seq., establishes the Robert C. Byrd Honors Scholarship Program and requires the Secretary to make grants to states to provide scholarships to out-
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standing high school graduates who show promise of continued excellence. 20 U.S.C. sections 1070d-35 and 1070d-37, and 34 C.F.R. 654.30 and 654.41, require the authority, as the state agency designated to receive the grant, to establish criteria and application procedures for the selection of eligible scholars. This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the Robert C. Byrd Honors Scholarship Program by establishing criteria and application procedures for the selection of eligible scholars.

(2) To amend the existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment merely delays the application deadline for a GED coordinator to submit a completed application from February 15 to June 30.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to extend the application deadline for a GED coordinator to submit a completed application from February 15 to June 30.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by establishing application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program.

(d) How the amendment will assist in the effective administration of the statutes: Same as (c).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 360 students each year receive an award under the Robert C. Byrd Honors Scholarship Program, which has previously been administered by the Kentucky Department of Education.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The proposed change merely delays the application deadline for a GED coordinator to submit a completed application from February 15 to June 30.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation establishes application procedures and selection criteria for the administration of the Robert C. Byrd Honors Scholarship Program. Administration of this program will be transferred from the Kentucky Department of Education to the Administration for scholarship hardship and disbursed beginning in the 2004-2005 academic year. Direct benefits to students (i.e. scholarship funds) are entirely federally funded. While there will be initial setup costs associated with the transition, the cost of administering the program is anticipated to not exceed $104,000, including staff directly responsible for administering the program, allocated support costs (i.e. accounting, legal, etc.) performed by in-house staff, postage, information technology support, etc. No extra staff will be employed to administer the authority's functions with respect to this program. Costs of administering the program will be borne by the authority through agency receipts from operation of its loan program.

(b) On a continuing basis: Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Robert C. Byrd Honors Scholarship Program is federally funded by an annual appropriation by Congress.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this administrative regulation. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal statutes and regulations that constitute the federal mandate are 20 U.S.C. 1070d-31 through 1070d-41 and 34 C.F.R. 654, subparts A, D, E, and F.

2. State compliance standards. These federal statutes and regulations establish the criteria for initial and continued eligibility of students, and establish the amount of the scholarship award. The federal criteria for eligibility and award amount are adopted by the authority without change. The federal statute also requires the authority to establish criteria and application procedures for the selection of eligible scholars in the Robert C. Byrd Honors Scholarship Program. Discretion is given to the authority to establish procedures and requirements in the following areas: initial application, nomination, selection, notification and disbursement. Applications submitted by individual students shall not be accepted. In order for an eligible student to be considered for an initial award under this program, the eligible student shall not have applied for consideration in a prior year. For high school seniors, the eligible student's participating high school shall nominate the eligible student, and shall submit to the authority a completed application by February 15. The application shall be accompanied by a certified transcript showing the cumulative grade point average for 7 semesters of high school, an official ACT score or SAT score, a high school guidance counselor's recommendation, not exceeding 50 words, pertaining to the student's promise of continued academic achievement and a listing of honors, activities, and community service performed during high school. For a GED recipient, a GED coordinator shall nominate the eligible student, and submit to the authority a completed application by February 15. The application shall be accompanied by an official high school transcript, any post-secondary course work, score certification and the GED coordinator's recommendation, not exceeding 50 words, pertaining to the student's promise of continued academic achievement. For nomination purposes, participating high schools with enrollments of 1,500 or more shall nominate a maximum of five applicants. High schools with enrollments of 1,000-1,499 may nominate a maximum of four applicants. High schools with enrollments of 500-999 may nominate a maximum of three applicants and high schools with enrollments of less than 500, may nominate a maximum of two applicants. A participating high school shall nominate only students who have a minimum ACT score of 23, or SAT score of 1060 and a minimum 3.5 grade point average for 7 semesters of high school. For GED graduates, a GED coordinator shall nominate only eligible students who have a minimum GED score of 2700. For selection purposes, the authority shall require review of applications to ensure compliance with the requirements set forth above, sort acceptable applications according to the 6 congressional districts in order to ensure proportional distribution, evaluate and score applications on a scientific basis by a stratified random technique, with consideration to demonstrated outstanding academic achievement and promise of continued achievement and reasonable geographic representation throughout the state. At least 1 scholar shall be selected among the GED recipients. A scholar shall be selected from eligible applicants without regard to the applicant's race, color, national origin, sex, religion, disability, economic background, educational expenses, or financial need, or whether the scholar attended a high school located within or outside of the commonwealth or whether the participation in the state school that the scholar plans to attend is public or private or is within or outside of the commonwealth. A selected scholar shall agree in writing that he shall repay to the authority the
total amount of the scholarship funds received for the academic term during which he receives an award if the scholar is ineligible during the academic term as determined by the participating institution or the authority. For notice, the authority shall notify eligible students, tentatively selected as scholars, of their status within 30 days after the application submission deadline. For disbursement the first payment shall be made at the beginning of the fall term after the participating institution has certified that the scholar is enrolled on a full-time basis and that the total amount of financial aid awarded to a scholar for a year of study, including the scholarship amount awarded pursuant to this administrative regulation, does not exceed the eligible student's total cost of attendance. The award shall be paid in at least 2 disbursements in the amount of 1/2 in the fall term and 1/2 in the spring term. The warrant will be made payable to the scholar, but will be sent to the school for delivery to the scholar. The award shall be utilized within 12 months of the time of initial award, except that the authority or executive director may authorize for sufficient cause a postponement of the utilization of the award for up to 12 additional months, beginning on the academic year in which the scholar otherwise would have enrolled in the institution after the scholarship award or the date the scholar interrupts enrollment, if the scholar requests in writing, before the fall payment is certified by the participating institution, that the award be delayed to postpone or interrupt his enrollment. A scholar who postpones or interrupts his enrollment at a participating institution in accordance with paragraph (a) of this subsection shall not be entitled to receive scholarship funds during the period of postponement or interruption, but shall be eligible to receive scholarship payments upon enrollment or reenrollment at a participating institution. The authority may extend the 12 month suspension period without terminating the scholar's eligibility if the scholar demonstrates to the satisfaction of the authority that extended postponement or interruption of enrollment beyond the 12 month suspension is due to exceptional circumstances beyond the scholar's control or necessary for the scholar to meet a commitment.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes and regulations impose specific requirements on administration of the Byrd Program with respect to eligibility and award amount. Specifically, they provide that a student is eligible to be selected as a scholar if he or she is a legal resident of the State to which he or she is applying for a scholarship, is a U.S. citizen or national, provides evidence from the U.S. Immigration and Naturalization Service that he or she is a permanent resident of the United States, is in the United States for or than a temporary purpose with the intention of becoming a citizen or permanent resident, is a permanent resident of the Trust Territory of the Pacific Islands (Palau), becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application, has applied or been accepted for enrollment as a full-time student at an institution of higher education, is not ineligible to receive assistance as a result of default on a federal student loan or other obligation, as provided under 34 C.F.R. 75.60 and files a statement of selective service registration status, in accordance with the provisions of 34 C.F.R. 688.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending. For award amount, the state education agency shall disburse $1,500 for each year of study for a maximum of 4 years of study to each scholar who is selected in accordance with the criteria established under 34 C.F.R. 654.41 and meets the requirements for continuing eligibility under 34 C.F.R. 654.51. The state education agency shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance, that loans are reduced prior to reducing a scholarship awarded under this program and that the selection process is completed, and the awards made, prior to the end of each secondary school academic year. The authority without change adopts the federal criteria for eligible and award amount. The federal statutes and regulations require the State Education Agency (SEA) to establish procedures for the following areas: initial application, nomination, selection, notification and disbursement. The federal statutes and regulations allow discretion to establish those criteria and procedures so long as they ensure that the SEA selects scholars:

   (a) Who are eligible students under the criteria provided in 34 C.F.R. 654.40;
   (b) Who have demonstrated outstanding academic achievement and show promise of continued achievement;
   (c) In a manner that ensures an equitable geographic distribution of awards within the State; and
   (d) Without regard to:
      (i) Whether the secondary school each scholar attends is within or outside the scholar's state of legal residence;
      (ii) Whether the institution of higher education each scholar plans to attend is public or private or is within or outside the scholar's state of legal residence;
      (iii) Race, color, national origin, sex, religion, disability, or economic background; and
      (iv) The scholar's educational expenses or financial need.

   The federal statutes and regulations also require that the procedures established by the State educational agency ensure that the agency shall:

   (a) Notify scholars of their selections and scholarship awards;
   (b) Disburse the scholarship funds in accordance with 34 C.F.R. Sec. 654.50 to the scholar, the institution of higher education in which the scholar enrolls, or co-payable to the scholar and the institution of higher education in which the scholar enrolls;
   (c) Complete the selection process and make the awards prior to the end of each secondary school academic year;
   (d) Collect any scholarship funds improperly disbursed under 34 C.F.R. 654.50;
   (e) Permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

   Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements than those in the federal statute and regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this administrative regulation that are stricter than the federal mandate.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:010. Kentucky teaching certificates.

RELATES TO: KRS 158.6451, 161.020, 161.028(1)(a), (b), (c), 161.030
STATUTORY AUTHORITY: KRS 161.028(1)(a), (b), (c), 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that a teacher and other professional school personnel hold a certificate of legal qualifications for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. KRS 161.028(1)(a) requires the Education Professional Standards Board to establish the standards for obtaining and maintaining a teaching certificate. KRS 161.028(1)(b) requires a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.028(1)(f) requires the Education Professional Standards Board to issue and renew any certificate. This administrative regulation establishes the Kentucky certification to be issued for teaching positions.

Section 1. Definitions. (1) "Approved program of preparation" means a program which has been approved by the Education Professional Standards Board under 16 KAR 5:010 for a specific certification or which has been approved for certification by the state education agency of another state.
(2) "Assessments" means the tests of knowledge and skills authorized by KRS 161.030 and established in 16 KAR 8:010.

(3) "Base certificate" means a stand-alone license to teach which encompasses authorization to teach introductory and interdisciplinary courses in related fields.

(4) "Beginning teacher internship" means one (1) year of supervision, assistance, and assessment required by KRS 161.030 and established in 16 KAR 7:010.

(5) "Certificate endorsement" means an addition to a base or restricted base certificate, which is limited in scope and awarded on the basis of completion of an endorsement program or a combination of educational requirements, assessments and experience as outlined in Section 5 of this administrative regulation.

(6) "Certificate extension" means an additional base or restricted base certificate in a content area or grade range.

(7) "Experienced teacher standards" means the standards established in 16 KAR 1:010 that identify what an effective experienced teacher shall know and do.

(8) "New teacher standards" means the standards established in 16 KAR 1:010 that identify what a new teacher shall know and be able to do.

(9) "Professional teaching certificate" means the document issued to:
   (a) An individual upon successful completion of the beginning teacher internship; or
   (b) An applicant for whom the testing and internship requirement is waived under KRS 161.030 based on preparation and experience completed outside Kentucky.

(10) "Provisional teaching certificate" means the document issued to an individual for the duration of the beginning teacher internship program.

(11) "Restricted base certificate" means a stand-alone license to teach in a specific subject area of certification which is the only subject area which can be taught under this limited certificate.

(12) "Statement of eligibility" means the document issued to an applicant upon completion of an approved program of preparation and successful completion of the assessments.

Section 2. Certificate Issuance. (1) A statement of eligibility for a provisional teaching certificate shall be issued to an applicant who has successfully completed:
   (a) A cumulative grade point average of 2.50 on a 4.0 scale; or
   b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework; or
   2. As required by Section 4(2)(g)(6) and (4)(e) of this administrative regulation, a master's degree with:
   a. A cumulative grade point average of 2.50 on a 4.0 scale; or
   b. A grade point average of 3.00 on a 4.0 scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework;
   (b) An approved program of preparation; and
   (c) The assessments corresponding to the certificate identified in Section 4 of this administrative regulation for which application is being made.

(2) Upon confirmation of employment in an assignment for the grade level and specialization identified on a valid statement of eligibility, a Provisional Teaching Certificate shall be issued for the duration of the beginning teacher internship established under KRS 161.030.

(3) Upon successful completion of the internship, a Professional Teaching Certificate shall be issued, valid for a four (4) year period.

Section 3. Certificate Renewal. (1) The renewal shall require completion of a five-year program of preparation which is consistent with:
   (a) The experienced teacher standards established in 16 KAR 1:010; or
   (b) The standards adopted by the Education Professional Standards Board for a particular professional education specialty and established in an applicable administrative regulation.

(2) The first five (5) year renewal shall require:
   (a) Completion of a minimum of fifteen (15) semester hours of graduate credit applicable to the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration; or
   (b) Completion of the professional development plan and a partial portfolio for the continuing education option established in 16 KAR 8:030.

(3) The second five (5) year renewal shall require:
   (a) Completion of the fifth-year program established in 16 KAR 8:020 by September 1 of the year of expiration; or
   (b) Completion of the professional development plan and a full portfolio for the continuing education option established in 16 KAR 8:030.

(4) Each subsequent five (5) year renewal shall require completion of the renewal requirements established in 16 KAR 4:060.

Section 4. Grade Levels and Specializations. (1) Preparation for a teaching certificate shall be based on:
   (a) The new teacher standards established in 16 KAR 1:010;
   (b) The accreditation and program approval standards established in 16 KAR 5:010, including the content standards of the relevant national specialty program associations; and
   (c) The goals for the schools of the commonwealth specified in KRS 158.8451 and the student academic expectations established in 703 KAR 4:060.

(2) A base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:
   (a) Interdisciplinary early childhood education, birth to primary, 16 KAR 2:040.
   (b) 1. Elementary school: primary through grade five (5) to include preparation in the academic disciplines taught in the elementary school;
   2. The elementary certificate shall be valid for teaching grade six (6) if grade six (6) is taught in a self-contained classroom or in a school organization in which grade six (6) is housed with grade (5) in the same building.
   3. A candidate for the elementary certificate may simultaneously prepare for certification for teaching exceptional children.
   (c) 1. Middle school option 1: grades five (5) through nine (9) with the equivalent of one (1) major to be selected from:
      a. English and communications;
      b. Mathematics;
      c. Science; or
      d. Social studies.
   2. Middle school option 2: grades five (5) through nine (9) with two (2) middle school teaching fields to be selected from:
      a. English and communications;
      b. Mathematics;
      c. Science; or
      d. Social studies.
   3. A candidate who chooses to simultaneously prepare for teaching in the middle school and for an additional base or restricted base certificate issued under this subsection or subsection (3) of this section, including certification for teaching exceptional children, shall be required to complete one (1) middle school teaching field;
   (d) Secondary school: grades eight (8) through twelve (12) with one (1) or more of the following specializations:
      1. English;
      2. Mathematics;
      3. Social studies;
      4. Biology;
      5. Chemistry;
      6. Physics; or
      7. Earth science;
   (e) Grades five (5) through twelve (12) with one (1) or more of the following specializations:
      1. Agriculture;
      2. Business and marketing education;
      3. Family and consumer science;
      4. Industrial education; or
      5. Technology education; or
   (f) All grade levels with one (1) or more of the following specializations:
      1. Art;
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2. A foreign language;
3. Health;
4. Physical education;
5. Integrated music;
6. Vocal music;
7. Instrumental music; or
8. School media librarian;
(g) Grades primary through twelve (12) for teaching exceptional children and for collaborating with teachers to design and deliver programs for preprimary children, for one (1) or more of the following: disabilities:
1. Learning and behavior disorders;
2. Moderate and severe disabilities;
3. Hearing impaired;
4. Hearing impaired with sign proficiency;
5. Visually impaired;
6. Communication disorders, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a master's degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 2; or
7. Communication disorders - SLPA only, valid at all grade levels for the instruction of exceptional children and youth with communication disorders, which shall require a baccalaureate degree in communication or speech language pathology, in accordance with 16 KAR 2:050, Section 3.

3. A restricted base certificate shall be issued specifying one (1) or more of the following grade level and specialization authorizations:
(a) Psychology, grades 8-12;
(b) Sociology, grades eight (8) through twelve (12);
(c) Journalism, grades eight (8) through twelve (12);
(d) Speech/media communications, grades eight (8) through twelve (12);
(e) Theater, primary through grade twelve (12);
(f) Dance, primary through grade twelve (12);
(g) Computer information systems, primary through grade twelve (12); or
(h) English as a second language, primary through grade twelve (12).

4. An endorsement to certificates identified in subsection (2) or (3) of this section shall be issued specifying one (1) or more of the following grade level and specialization authorizations:
(a) Computer science, grades eight (8) through twelve (12);
(b) English as second language, primary through grade twelve (12);
(c) Gifted education, primary through grade twelve (12);
(d) Driver education, grades eight (8) through twelve (12);
(e) Reading and writing which shall require a master's degree in reading, primary through grade twelve (12);
(f) Instructional computer technology, primary through grade twelve (12);
(g) Other instructional services - school safety, primary through grade twelve (12);
(h) Other instructional services - environmental education, primary through grade twelve (12):
(i) Other instructional services - school nutrition, primary through grade twelve (12). The endorsement for school nutrition shall be obtained by either:
1. Completion of the requirements of Section 5(2) of this administrative regulation; or
2. Obtaining the school food service and nutrition specialist (SFNS) credential issued by the American School Food Service Association (ASFSA); or
(ii) Learning and behavior disorders, grades eight (8) through (12):
1. This endorsement shall be issued following completion of the requirements of Section 5(2) of this administrative regulation; and
2. This endorsement shall only be issued to candidates with preparation and certification for a base or restricted base certificate for the secondary grades eight (8) through twelve (12).

Section 5. Additional Certification. (1) A certificate extension shall be issued for any base or restricted base certificate area offered in Section 4(2) or (3) of this administrative regulation and shall require:
(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program upon demonstration of competency in the relevant teaching methodology verified by coursework, field experience, portfolio, or other proficiency evaluation.

(2) A certificate endorsement shall be issued for any area listed in Section 4(4) of this administrative regulation and shall require:
(a) A valid base or restricted base certificate, including a statement of eligibility;
(b) Successful completion of the applicable assessments; and
(c) Recommendation from an approved preparation program.
(3) In order to assist districts in meeting the "highly qualified" teacher requirements of the No Child Left Behind Act of 2001, the Education Professional Standards Board establishes an experimental option for professionally certified teachers to add certificate endorsements and/or extensions. For applications received from the effective date of this administrative regulation through June 30, 2006, a certificate extension or certificate endorsement may be issued if an educator submits a completed application and meets the following requirements:
(a) A valid Kentucky professional teaching certificate;
(b) Current employment in a certified position or a bona fide offer of employment in a certified position in a Kentucky public school;
(c) Successful completion of the applicable content assessments; and
(d) A declared major in the area of certification being sought; or
(e) A combination of education, experience, professional development, awards and achievements in the area of certification being sought sufficient to demonstrate subject matter competency as evidenced by a score of ninety (90) points on the HOUSE Index contained within the application form, TC-HQ incorporated by reference. Coursework must be validated on the application by a Kentucky college or university approved by the EPSB to serve as a "clearinghouse" for the purposes of this option.
(4) If a teacher currently holds a professional certificate in the secondary grades, eight (8) through twelve (12) and applies for a certificate extension or endorsement in the same content area for a middle school grades five (5) through nine (9), the teacher shall not be required to complete the content assessment.

Section 6. Candidates pursuing certification via an alternative route to certification shall receive the same certificates delineated in Section 4 of this administrative regulation following completion of the appropriate requirements specific to each alternative route.

Section 7. [Effective Dates. (1) The provisions for the issuance of a teaching certificate for each grade level and for each specialization identified in this administrative regulation shall become effective for all students admitted to the specific program of preparation beginning January 1, 1998.
(2) A candidate admitted prior to January 1, 1998, under 16 KAR 2:050, shall complete the program by September 1, 2000; 16 KAR 2:050,
(3) A candidate who fails to complete the program by September 1, 2000, and does not apply for the certification by January 1, 2001, shall be required to qualify for the certification identified in this administrative regulation.
(4) A candidate admitted to an advanced level preparation program prior to September 1, 1998, shall:
(a) Complete the program by September 1, 2003; and
(b) Apply for the certification by January 1, 2004.
(5) A candidate who is admitted to the preparation program for the interdisciplinary-physical science secondary certificate prior to September 1, 2001 shall:
1. Complete the program by September 1, 2003; and
(b) A candidate who fails to complete the preparation program for the interdisciplinary-physical science secondary certificate by
September 1, 2003 or who does not apply for certification by January 1, 2004 shall be required to qualify for one (1) or more of the secondary science certificates in physics, chemistry, or earth science established in this administrative regulation.

(8) The Education Professional Standards Board shall communicate to the Kentucky college or university approved for these programs that the effective date for admission to an revised new program identified in this administrative regulation and the date by which a candidate shall complete the former program. Colleges and universities shall take adequate steps to inform a candidate in the program regarding the deadline dates.

Section 8. [6.] Incorporation by Reference. (1) The following material is incorporated by reference:


(b) Form TC-Hq, 4/2004, Education Professional Standards Board.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2004 at 1 p.m. at the offices of the Education Professional Standards Board, 100 Airport Road, Third Floor, Conference Room B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 20, 2004 five workdays 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 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. 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
 Contact person: Brenda D. Allen
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation specifies the requirements for teacher certification in various content areas. It specifically adds a new certificate for environmental education, and adopts an experimental program in which certified teachers meeting strict standards can achieve additional certificate endorsements through a combination of education, assessments, and experience.
(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 and 161.030 require a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adds a certificate endorsement for environmental education. Additionally, the amendment adopts an experimental program in which teachers, who already meet the requirements of the federal No Child Left Behind Act, may achieve an additional certificate endorsement through a prescribed combination of education, assessment, and experience, rather than requiring those teachers to assume the financial and other obligations of completing further postsecondary educator preparation programs.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments add a new certificate endorsement for environmental education, with the goal of creating a cadre of teachers who can provide leadership in environmental education across the state. The amendments also allow previously certified teachers, who already meet the requirements of the No Child Left Behind Act, to achieve additional certificate endorsements based on a combination of education, assessment, and experience without assuming the additional financial and other burdens of completing further formal postsecondary educator preparation programs.
(b) The necessity of this amendment to this regulation: The amendment recognizes a new certificate endorsement requiring all public school environmental educators to successfully complete strict standards that are also required of teachers in other content areas. The amendments allowing an experimental, practical alternative to formal postsecondary programs in order to achieve a new certificate endorsement will assist Kentucky school districts in making sure that all teachers of core content are "highly qualified" as defined by the No Child Left Behind Act, will decrease the burden on public school teachers in achieving new endorsements for which they are qualified, and also more closely aligns these teachers with alternative certification routes for teachers who did not follow traditional educator-preparation routes to the classroom.
(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. The amendments establish the new certificate endorsement for environmental education, and an alternative route for teachers to achieve new certificate endorsements.
(d) How the amendment will assist in the effective administration of the statutes: The amendments acknowledge changing educational needs as reflected in the new certificate endorsement for environmental education, and will allow previously certified teachers to achieve new certificate endorsements through a combination of education, assessment, and experience.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 Kentucky school districts, 28 educator preparation programs, and educators seeking new and additional certification.

(2) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The 176 school districts can be affected by the availability of properly certified teachers who meet the standard of "highly qualified" as defined by the No Child Left Behind Act by the end of the 2005-2006 school year. The educator preparation programs will be affected by implementing programs to properly educate environmental educators, and potentially assisting as a "clearing house" for teachers seeking new or additional certificate endorsements through the experimental, alternative route. Educators will have an alternative route by which their education, experience, and assessments will be recognized when applying for new or additional certificate endorsements.

(3) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to
previously certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, educator preparation programs, or school districts.

(g) Who is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change, if it is an amendment: No additional increases in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Comment)

16 KAR 4-020. Certification requirements for teachers of exceptional children.


STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), (c), 161.030

NESSISSITY, FUNCTION, CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. 34 C.F.R. Part 300 recognizes the state education agency as the authority in determining certification or licensure requirements for individuals providing special education or related services. KRS 161.030 identifies the Education Professional Standards Board as the state education agency with certification authority for Kentucky. KRS 161.020 and 161.028 require the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate for all public school positions, including those for teaching exceptional children. This administrative regulation establishes the certification requirements for teachers of exceptional children.

Section 1. Certification Requirements for Assignment of Special Education Personnel. (1) Mild mental disability (MMD). Teachers holding the following certification shall be assigned to serve pupils with mild mental disabilities at any grade level [within the grade range limitations of the teacher's certificate]:

(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(2) Orthopedic impairment (OI).

(a) Teachers holding the following certification shall be assigned to serve pupils with orthopedic impairments at any grade level [within the grade range limitations of the teacher's certificate]:

1. Certification for orthopedically handicapped or physically handicapped, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

2. Certification for teaching exceptional children.

(b) Teachers possessing one (1) of the certificates identified in paragraph (a) of this subsection shall be assigned based on the learning characteristics and services needs of the child; and

(3) Other health impairment (OH1).

(a) Teachers shall be assigned to serve pupils identified as other health impaired at any grade level [within the grade range limitations of the teacher's certificate] based upon the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified as other health impaired shall possess a certificate for teaching exceptional children.

(4) Specific learning disability (LD). Teachers holding the following certification shall be assigned to serve pupils with learning disabilities at any grade level [within the grade range limitations of the teacher's certificate]:

(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(5) Developmental delay (DD). Teachers holding the following certification shall be assigned to serve pupils with developmental delay at any grade level [within the grade range limitations of the teacher's certificate]:

(a) Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12); or

(b) Certification for teaching the educable mentally retarded, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12).

(6) Emotional-behavioral disability (EBD).

(a) Teachers holding the following certification shall be assigned to serve pupils identified as emotional-behavioral disabled at any grade level [within the grade range limitations of the teacher's certificate]:

1. Certification for learning and behavior disorders, grades K-12, P-12, or seven (7) through twelve (12);

2. Certification for teaching the educable mentally handicapped, educable mentally handicapped, emotionally disturbed, or neurologically impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12);

3. Certification for teaching exceptional children.

(b) Teachers possessing one (1) of the certificates identified in paragraph (a) of this subsection shall be assigned based on the learning characteristics and services needs of the child.

(7) Functional mental disability (FMD). Teachers holding the following certification shall be assigned to serve pupils with functional mental disabilities at any grade level [within the grade range limitations of the teacher's certificate]:

(a) Certification for trainable mentally handicapped, grades K-12;

(b) Certification for teaching the trainable mentally retarded, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12);

(c) Certification for teaching the severely and profoundly handicapped at any grade level; or

(d) Certification for teaching the moderately and severely disabled, grades P-12.

(8) Multiple disabilities (MD).

(a) Teachers shall be assigned [within the grade range limitations of the teacher's certificate] to pupils at any grade level who have multiple disabilities consistent with the nature of each of the student's different disabilities and based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils with multiple disabilities shall possess a certificate for teaching exceptional children.

(9) Deaf-blindness.

(a) Teachers shall be assigned to serve pupils identified with deaf-blindness at any grade level [within the grade range limitations of the teacher's certificate] based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified with deaf-blindness shall possess a certificate for teaching exceptional children.

(10) Autism.

(a) Teachers shall be assigned to serve pupils identified with autism at any grade level [within the grade range limitations of the teacher's certificate] based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified with autism shall
possess a certificate for teaching exceptional children.

(11) Traumatic brain injury (TBI).

(a) Teachers shall be assigned to serve pupils identified as having a traumatic brain injury at any grade level (within the grade range limitations of the teacher's certificate) based on the learning characteristics and services needs of the child; and

(b) All teachers assigned to pupils identified as having a traumatic brain injury shall possess a certificate for teaching exceptional children.

(12) Hearing impaired (HI). Teachers holding the following certification shall be assigned to serve pupils with hearing impairments at any grade level (within the grade range limitations of the teacher's certificate):

(a) Certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

(b) Certification for teaching the hearing impaired, grades P-12.

(13) Visually impaired (VI). Teachers holding the following certification shall be assigned to serve pupils with visual impairments at any grade level (within the grade range limitations of the teacher's certificate):

(a) Certification for teaching the partially seeing, blind, or visually impaired, grades one (1) through twelve (12), one (1) through eight (8), or seven (7) through twelve (12); or

(b) Certification for teaching the visually impaired, grades P-12.

(14) Communication disorders. Teachers holding the following certification shall be assigned to serve pupils who have been identified as needing instruction for speech or language disorders at any grade level 

(a) Certification for speech and hearing, grades one (1) through twelve (12);

(b) Certification for speech and communication disorders, grades K-12; or

(c) Certification for communication disorders, grades P-12.

Section 2. Certification Requirements for Assignment of Interdisciplinary Early Childhood Education Teachers for the Provision of Special Education Services. (1) Teachers holding the following qualifications shall be assigned to serve birth to primary pupils who have been identified as needing special education services:

(a) Certification for interdisciplinary early childhood education offered under 16 KAR 2:140 and 16 KAR 2:040;

(b) Exemption identified in 16 KAR 2:040; or

(c) Qualifications set forth in 704 KAR 3:410, Section 7(a).

(2) A special education teacher identified in Section 1 of this administrative regulation shall not be precluded from providing services in the teacher's certification area to birth to primary pupils with disabilities if that certification is valid for the primary ages.

Section 3. Probationary and Emergency Provisions. (1) If no regularly certified teacher as delineated in Sections 1 and 2 of this administrative regulation is available to provide the special education services, the local district may employ a teacher certified on a probationary status under 16 KAR 2:160.

(2) If no probationary certified special education teacher is available, the district may employ a teacher certified on an emergency status under the requirements of KRS 161.100 and 16 KAR 2:120.

Section 4. Waiver Requests for Teacher Assignment. (1) Local school districts which need to assign teachers to teach classes or pupils, with the exception of pupils receiving services for communication disorders, not consistent with the above criteria shall request a waiver for the teacher assignment through the Kentucky Department of Education, Office of Special Instructional Services, Division of Exceptional Children and be approved by the Education Professional Standards Board.

(2) The Education Professional Standards Board and Department of Education shall give consideration for this approval based on information provided by the local school district in its request. The request shall:

(a) Be made prior to September 15 or within fifteen (15) school days of the need for assignment if it occurs after September 15;

and

(b) Include:

1. The teacher's name, school assignment, certificate number, class plan assignment, and current certification;

2. A listing of pupils currently served by [age-and] category of exceptionality;

3. A listing of pupils the district is requesting to be served by [age-and] exceptionality; and

4. Any other relevant information which the district wishes to have considered in the decision-making process.

(3) Following consideration by the Department of Education and approval by the Education Professional Standards Board, the local district shall be promptly notified of the decision on the waiver request.

(4) The assignment shall not exceed the length of the school year for which it was initiated.

LYDIA COFFEY, Chair
APPROVED BY AGENCY April 13, 2004
FILED WITH LRC: April 14, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2004 at 1 p.m. at the offices of the Education Professional Standards Board, 100 Airport Road, Third Floor, Conference Room B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 20, 2004 five workdays prior to the hearing, of their intent to attend. If no notice 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. 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda D. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the certification requirements for teachers of exceptional children and the appropriate assignments for those teachers.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. KRS 167.200 to 167.290 establish the framework for special education programs in state school districts. 34 C.F.R. Part 300 recognizes the state education agency as having responsibility for determining certification requirements for teachers providing special education services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 rests the responsibility of issuing certificates to teachers and other school personnel with the Education Professional Standards Board. KRS 157.200 to 157.293 establish the framework for state special education programs and 34 C.F.R. part 300 recognizes the state education agency with responsibility for certification of individuals providing special education services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-
trative regulation specifies the certification requirements for teachers of exceptional children and the appropriate assignments for those teachers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Previously, 55 old certificates were fragmented into grade levels in the exceptional child area. In 1998 the Education Professional Standards Board developed a "crosswalk" document which streamlined the 55 old, fragmented certificates into 5 new "all grades" certificates. This amendment simply removes references to the grade ranges so that teachers holding the "old" certificates may teach "all grades" in their respective areas, and makes the regulation consistent with the crosswalk document and with assignments in local districts.

(b) The necessity of this amendment to this regulation: The amendment aligns the regulation with the crosswalk document, so that teachers holding the "old" certificates are not limited to certain grade levels within their respective areas. New certificates for teachers of exceptional children are currently issued without the former grade limitations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. KRS 157.200 to 157.280 establish the framework for special education programs, and 34 C.F.R. part 300 recognizes the state education agency with responsibility for certification of individuals providing special education services. This amendment aligns the regulation with certificates being issued to teachers of exceptional children.

(d) How the amendment will assist in the effective administration of the statutes: Since new certificates for teaching exceptional children are not grade specific, but rather area specific, teachers holding the "old" certificates will not be subject to grade limitations. This will assist local school districts in assigning teachers to appropriate classes for exceptional children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 Kentucky school districts and educators holding "old" certificates in the area of exceptional children.

(4) Provide an assessment of how the entire group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The 176 school districts can be affected by the availability of properly certified teachers of exceptional children who are not limited to specific grade levels, but rather, to specific areas. Consequently, teachers holding the "old" certificates will be more readily available to children within their areas, rather than being restricted by grade-specific limitations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There are no changes to the current focus for achieving the exceptional child teaching certificates.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No additional increases in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase fees, either directly or indirectly.

(c) DELIVERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

EDUCATION PROFESSIONAL STANDARDS BOARD

(Amendment)

16 KAR 8:010. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028(1)(a), (k), 161.030(3), (4)
STATUTORY AUTHORITY: KRS 161.028(1)(a), (k), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3) requires that a new teacher, including an out-of-state teacher with less than two years experience, successfully complete appropriate assessment prior to initial certification in Kentucky. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the tests, determine the passing scores, establish a reasonable fee for the assessments, and establish a procedure for a person to repeat a test and be informed of his strengths and weaknesses in each area. This administrative regulation establishes the written examination prerequisites for teacher certification, including the required tests, the minimum acceptable level of achievement on each test, the fee for each test, and the procedure for retaking the test.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the specialty tests and passing scores identified in this section for each new teacher applicant, and each teacher seeking an additional certificate, who completes application for certification on or after September 1, 2003. The pedagogy tests identified in Section 3 are required for new teachers only.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board Interdisciplinary Early Childhood Specialty Test, with a passing score of 150.

(2) Until August 31, 2005, an applicant for elementary certification shall take Elementary Education: Curriculum, Instruction, and Assessment (0011) with a passing score of 163 or Elementary Education: Content Knowledge (0014) with a passing score of 148. Beginning September 1, 2005, the applicant shall take Elementary Education: Content Knowledge (0014) with a passing score of 148.

(3) An applicant for middle school certification shall take one (1) or two (2) middle school specialty tests based on the applicant's area or areas of specialty with passing scores as identified in this subsection:

(a) Middle School Mathematics (0069) - 143;
(b) Middle School Science (0439) - 139;
(c) Middle School Language Arts (0049) - 153; or
(d) Middle School Social Studies (0089) - 144.

(4) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take one specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:

(a) Communication disorders:

1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157; Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Speech Language Pathology (0330) - 600;
(b) Learning and behavior disorders:

1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157; Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Until August 31, 2006, Special Education: Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) - 157 or Education of Exceptional Students: Mild to Moderate Disabilities (0842) - 172, Beginning September 1, 2005.

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Exceptional Students: Mild to Moderate Disabilities (0542) - 172;
(c) Moderate and severe disabilities:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 167. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 167; and
2. Special Education: Teaching Students with Mental Retardation (0321) - 146;
(d) Hearing impaired:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 167. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 167; and
2. Education of Deaf and Hard of Hearing Students (0271) - 167;
(e) Hearing impaired with sign proficiency:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 167. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 167; and
2. Education of Deaf and Hard of Hearing Students (0271) - 167; and
3. One (1) [39] of the following tests with a passing score of "Intermediate Level":
   (a) Sign Communication Proficiency Interview (SCPI); or
   (b) Educational Sign Skills Evaluation (ESSE).
(f) Visually impaired:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 167. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 167; and
   (c) Education of Students with Visual Impairments (0280) - 660.
5. (a) Applicant for certification at the secondary level shall take the specialty tests corresponding to the applicant's specialty with the passing scores identified in this subsection:
   (a) Biology:
      1. Biology: Content Knowledge Part 1 (0231) - 156; and
      2. Biology: Content Essays (0233) - 141;
   (b) Chemistry:
      1. General Science: Content Knowledge Part 2 (0432) - 148; and
      2. Chemistry: Content Knowledge (0241) - 138;
   (c) English:
      1. English Language and Literature: Content Knowledge (0041) - 160; and
      2. English Language, Literature and Composition Essays (0042) - 155;
   (d) Social Studies:
      1. Social Studies: Content Knowledge (0081) - 151; and
      2. Social Studies: Interpretation of Materials (0083) - 155;
   (e) Mathematics:
      1. Mathematics: Content Knowledge (0061) - 125; and
      2. Mathematics: Proofs, Models, and Problems (0063) - 141;
   (f) Physics:
      1. General Science: Content Knowledge, Part 2 (0432) - 146; and
      2. Physics: Content Knowledge (0261) - 114;
   (g) Earth science:
      1. General Science: Content Knowledge, Part 2 (0432) - 146; and
      2. Earth Science: Content Knowledge (0571) - 145; and
   (h) Physical science:
      1. General Science: Content Knowledge-Part 2 (0432) - 146; and
      2. Either:
         a. Chemistry: Content Knowledge (0241) - 138; or
         b. Physics: Content Knowledge (0261) - 114; or
         c. Earth Science: Content Knowledge (0571) - 146.
5. (a) Applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing scores as identified in this subsection.
   (a) Art:
      1. Content Knowledge (0133) - 154; and
      2. Art Making (0131) - 154;
   (b) French:
      1. French: Content Knowledge (0173) - 159; and
      2. French: Productive Language Skills (0171) - 167;
   (c) German:
      1. German: Content Knowledge (0161) - 157; and
      2. Health Education (0550) - 630;
   (e) Latin:
      1. Latin (0600) - 630;
   (f) Integrated music:
      1. Music: Content Knowledge (0113) - 150; and
   (g) Vocal music:
      1. Music: Content Knowledge (0113) - 150; and
   (h) Instrumental music:
      1. Music: Content Knowledge (0113) - 150; and
   (i) Physical education:
      1. Physical Education: Content Knowledge (0091) - 147; and
      2. Physical Education: Movement Forms-Analysis and Design (0092) - 151;
   (k) Spanish:
      1. Spanish Content Knowledge (0191) - 160; and
      2. Spanish: Productive Language Skills (0192) - 158; or
   (x) School Media Librarian: Library Media Specialist [Specialists] (0310) - 840 [no passing score].
7. An applicant for career and technical education certification to teach in grades 5-12 with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:
   (a) Agriculture: Agriculture (0700) - 520;
   (b) Business and Marketing Education - Business Education (0100) - 580;
   (c) Family and Consumer Sciences - Home Economics Education (0120) - 570;
   (d) Technology Education - Technology Education (0050) - 600; or
   (e) Industrial Education. Applicants for industrial education with one (1) or more trade and industry specializations shall complete the assessments established in 16 KAR 6:020.
8. An applicant for a restricted base certificate in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
   (a) English as a Second Language: English to Speakers of Other Languages [Teaching English as a Second Language (0360) - 620;
   (b) Speech/Media Communications: Speech Communication (0220) - 580;
   (c) Theater: Theatre (0640) - 630.
9. (a) Applicant for an endorsement in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
   (a) English as a Second Language: English to Speakers of Other Languages [Teaching English as a Second Language (0360) - 620;
   (b) Learning and Behavior Disorders, grades 8-12: Until August 31, 2006, Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) - 157. Beginning September 1, 2006, Education of Exceptional Students: Mild to Moderate Disabilities (0542) - 172.
Section 3. The Education Professional Standards Board shall require the specialty tests and passing scores identified in this section for each new teacher applicant, and each teacher seeking an additional certificate, who completes application for certification before September 1, 2003. A test completed more than five (5) years prior to application for certification, and applied under this section, shall not be acceptable. A passing score on a test completed on or after January 1, 2002 shall be valid for a teacher who makes application under this section before September 1, 2003.
4. An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional
Standards-Board-Interdisciplinary Early Childhood Specialty Test, with a passing score of 150.

An applicant for elementary certification shall take Elementary Education: Curriculum, Instruction, and Assessment (0011) with a passing score of 163.

An applicant for middle school certification shall take one (1) or two (2) middle school specialty tests based on the applicant's area or areas of specialty with passing scores as identified in this subsection:

(a) Middle School Mathematics (0069) — 143;
(b) Middle School Science (0439) — 139;
(c) Middle School English Language Arts (0049) — 153;
(d) Middle School Social Studies (0089) — 144.

An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:

(a) Communication Disorders:
1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) — 146; and
2. Speech Language Pathology (0330) — 600.
(b) Learning and Behavior Disorders:
1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) — 146; and
2. Special Education: Teaching Student with Behavioral Disorders/Emotional Disturbances (0371) — 167.
(c) Moderate and Severe Disabilities:
1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) — 146; and
2. Special Education: Teaching Students with Mental Retardation (0321) — 146.
(d) Hearing Impaired:
1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) — 146; and
2. Education of Deaf and Hard of Hearing Students (0271) — 167.
(e) Hearing Impaired with Sign Proficiency:
1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) — 146; and
2. Education of Deaf and Hard of Hearing Students (0271) — 167.
3. One (1) of the following tests with a passing score of "Intermediate Level":
   a. Sign Communication Proficiency Interview (SCPI); or
(f) Visually Impaired:
1. Special Education: Application of Core Principles Across Categories of Disabilities (0352) — 146; and
2. Teaching Students with Visual Impairments (0280) — 660.
(g) An applicant for certification at the secondary level shall take the specialty test corresponding to the applicant's specialty with the passing scores identified in this subsection:
   a. Biology:
      1. Biology: Content Knowledge Part 1 (0231) — 156; and
      2. Biology: Content Essays (0233) — 144.
   b. Chemistry:
      1. General Science: Content Knowledge Part 2 (0432) — 146; and
   c. English:
      1. English Language and Literature: Content Knowledge (0041) — 160; and
      2. English Language, Literature and Composition Essays (0042) — 155.
   d. Social Studies:
      1. Social Studies: Content Knowledge (0081) — 151; and
   e. Mathematics:
      1. Mathematics: Content Knowledge (0051) — 125; and
   f. Physics:
      1. General Science: Content Knowledge Part 2 (0432) — 146; and
      2. Physics: Content Knowledge (0261) — 144.
   g. Earth Science:
      1. General Science: Content Knowledge, Part 2 (0432) — 146.
   h. Physical Science:
      1. General Science: Content Knowledge Part 2 (0432) — 146.
   i. Either:
      1. Chemistry: Content Knowledge (0241) — 138; or
      2. Physics: Content Knowledge (0261) — 144.
   j. An applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing scores as identified in this subsection:
      a. Art:
         1. Content Knowledge (0133) — 154; and
      b. French:
         1. French: Content Knowledge (0173) — 169; and
      c. German:
         1. German: Content Knowledge (0181) — 167.
      d. Health:
         1. Health Education (0560) — 630.
      e. Latin:
         1. Latin (0600) — 630.
      f. Integrated Music:
         1. Music: Content Knowledge (0113) — 160; and
      g. Vocal Music:
         1. Music: Content Knowledge (0113) — 150; and
      h. Physical Education:
         1. Physical Education: Content Knowledge (0091) — 147; and
         2. Physical Education: Movement Forms Analysis and Design (0092) — 151.
      i. Spanish:
         1. Spanish Content Knowledge (0191) — 160; and
      k. School Media Librarians: Library Media Specialists (0310) — no passing score.
   l. An applicant for career and technical education certification to teach in grades 6-12 with one (1) or more of the following specializations shall take the specialty test or tests with the passing scores as identified in this subsection:
      a. Agriculture: Agriculture (0700) — no passing score.
      d. Technology Education: Technology Education (0050) — 600.
      e. Industrial Education: Applicants for industrial education with one (1) or more trade and industry specializations shall complete the assessments established in 16 KAR 6:020.
   m. An applicant for a restricted base certificate in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
      b. Speech/Media Communications: Speech Communication (0220) — no passing score.
      c. Theater/Finance (0640) — no passing score.
   n. An applicant for an endorsement in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
      b. Learning and Behavior Disorders: Grades 8-12: Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) — 157.
Section 4.1 In addition to the specialty area tests established in Section 2 of this administrative regulation, the Education Professional Standards Board shall require the pedagogy tests and passing scores identified in this section for each new teacher applicant beginning September 1, 2003.

(1) An applicant for elementary certification (grades P-5) shall take Principles of Learning and Teaching: Grades K-6 (0522) - 161.

(2) An applicant for middle school certification grades five (5) through nine (9) shall take Principles of Learning and Teaching: Grades 5-9 (0523) - 161.

(3) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The specialty area tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(4) An applicant for certification at the secondary level grades eight (8) through twelve (12) shall take Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

(5) An applicant for certification in all grades with a specialty area (e.g., art, music, etc.) shall take either:
   (a) Principles of Learning and Teaching: Grades K-6 (0522) - 161;
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) - 161; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

(6) An applicant for career and technical education certification in grades five (5) through twelve (12) shall take either:
   (a) Principles of Learning and Teaching: Grades 5-9 (0523) - 161; or
   (b) Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:
   (a) Principles of Learning and Teaching: Grades K-6 (0522) - 161;
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) - 161; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

Section 4.6 Assessment: Recency. (1) A passing score on a test established in this administrative regulation and completed on or after January 1, 2002 shall be valid for purpose of applying for certification for five (5) years from the test administration date.

(2) [Beginning September 1, 2003, an applicant for initial or additional Kentucky teacher certification shall comply with the assessment recency requirements established in this section.

(3) A test established in this administrative regulation shall be valid for five (5) years from the test administration date.

(4) A passing score on a test established in this administrative regulation and completed after September 1, 2002 shall be valid for five (5) years from the test administration date.

(5) (a) A teacher shall complete an application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established in this administrative regulation.

(b) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(6) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5.7 (1) An applicant for initial certification shall take the assessment on a date established by:

(a) The Educational Testing Service;

(b) The Education Professional Standards Board for special administration; or

(c) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall provide test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration. An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6.8 An applicant shall pay the appropriate examination fee for each relevant test required to be taken.

Section 7.9 An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake
the test or tests during one (1) of the scheduled test administra-
tions.

Section 8, [16] The Education Professional Standards Board shall collect data and conduct analyses of the scores and institu-
tional reports provided by the Educational Testing Service to de-
terminate the impact of these tests and permit a review of this ad-
ministrative regulation on an annual or biennial basis.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on May 27, 2004 at 1 p.m. at the offices of the Education Professional Standards Board, 100 Airport Road, Third Floor, Room B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 20, 2004 five workdays 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 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. 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 ad-
ministrative regulation. Written comments shall be accepted until June 12, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Ken-
tucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda D. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the written examination prerequisites for teacher certification. It specifically adopts 3 new PRAXIS assessments, reinstates the updated Praxis II Library Media Assessment, and establishes passing scores and effective dates for all 4 assessments.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 requires the Praxis II Library Media Assessment, and determines acceptable scores for such certification with the Education Professional Standards Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adjusts the requirements for obtaining teaching certificates for elementary education and teaching students with disabilities, as well as reinstating the updated Praxis test for library media specialists.

(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments adopt 3 new Praxis II assessments, developed by the Educational Testing Service, for elementary and exceptional student education. The amendments restate the assessment for library media specialists, which had been sus-
pended since 2001 due to validity concerns. The amendment also adjusts passing scores for these assessments within the 15 to 25 national percentile range set by the Education Professional Stan-
dards Board in May 1999. Finally, the amendments allow continua-
tion of the previous elementary education assessment until Sep-
tember 1, 2005, and allow continuation of the other 3 assessments until September 1, 2006, so that students will have time to com-
plete the old assessment(s) if they choose and educator prepara-
tion programs will have ample time to adjust their programs to accommodate the new assessments.

(b) The necessity of this amendment to this regulation: The amendment aligns Kentucky certification and testing requirements in the states areas with the most recent and viable assessments being offered. Adjustments to the passing scores keep them within the 15 to 25 national percentile range, set by the Education Professional Standards Board in May 1999, so that frequent future changes should not be necessary. Finally, the reinstated library media specialist Assessment will allow viable testing of candidates for that certificate.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. The amendments establish the requirements for obtaining elementary and exceptional student education, and library media specialist certificates.

(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendments acknowledge the changes in assessment, and have passed the requirements for the stated certificates, and update the passing scores to more accurately reflect an educator's preparedness for certification.

(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this admin-
istrative regulation: 176 Kentucky school districts, 28 educator preparation programs, and educators seeking new and additional certification as an elementary teacher, teacher of exceptional stu-
dents, or library media specialist.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The 176 school districts can be affected by the availability of properly certified teachers; applicants must pass the appropriate assessment prior to receipt of certification which makes them eligible for immediate employment. The educator preparation programs will be affected by properly educating elementary and exceptional student teachers, and library media specialists, so that they will be able to pass the required assessments.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional agency funds allocated or necessary for implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(b) On a continuing basis: No additional agency funds allo-
cated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, edu-
cator preparation programs, or school districts.

(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: State General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-
tion, if new, or by the change, if it is an amendment: No additional increases in fees or funding will be necessary.

(8) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or directly or indirectly increase any fees.

(9) TIERING: Is tiered applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.
EDUCATION PROFESSIONAL STANDARDS BOARD

(AMENDMENT)

16 KAR 8:030. Continuing education option for certificate renewal and rank change.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.095, 161.1211

STATUTORY AUTHORITY: KRS 161.020, 161.028(1)(a), 161.030(1), 161.095, 161.1211

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board to promulgate an administrative regulation establishing procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.020, 161.028, and 161.030 vest authority for the issuance and renewal of certification for all professional school personnel in the Education Professional Standards Board. KRS 161.1211 establishes certificate ranks and requires the Education Professional Standards Board to issue rank classifications. This administrative regulation establishes the procedures for the continuing education option for certificate renewal and rank change.

Section 1. Procedures for the first and second renewal of the professional teaching certificate established in 16 KAR 2:010 shall require completion of:

(1) The continuing education option established in this administrative regulation;

(2) A planned fifth-year program established in 16 KAR 8:020.

Section 2. The continuing education option shall consist of four (4) phases (components):

(1) Building a plan for job-embedded professional development and completion of the on-line module;

(2) Content exploration and research;

(3) Student instruction and assessment; and

(4) Professional leadership and publication.

Section 3. (1) A teacher who chooses the continuing education option for certificate renewal and rank change shall:

(a) Attend a program orientation meeting, conducted by the Education Professional Standards Board or its designee, prior to applying for this program; and

(b) Successfully complete a seminar on how to build a plan for the job-embedded professional development.

(2) The continuing education option shall require the following procedures:

(a) A teacher who chooses to follow the continuing education option for certificate renewal and rank change shall attend a program orientation meeting prior to applying for this program.

(b) The program orientation meeting shall be conducted by the Education Professional Standards Board or its designee.

(2) The teacher shall successfully complete a seminar on how to build a plan for the job-embedded professional development.]

(a) The seminar shall be approved by the Education Professional Board for this purpose.

(b) A school district, group of districts, or any Kentucky post-secondary institution with an accredited educator preparation program may make application to the Education Professional Standards Board for approval to sponsor a seminar. The Education Professional Standards Board may sponsor a seminar in any district or group of districts in which a seminar is not otherwise offered.

(c) The seminar shall be led by a continuing education option coach approved by the Education Professional Standards Board.

(d) The seminar shall be a blend of:

1. Web-based instruction; and

2. Face-to-face cohort meetings.

(e) The web-based instruction shall be provided by the Education Professional Standards Board through an on-line module at www.KYEducators.org.

(f) The face-to-face cohort meetings shall be offered at least two (2) times per month during the plan building seminar.

2. Following completion of phase one (1) of the continuing education option, face-to-face cohort meetings shall continue [the on-line module and plan building seminar, the cohort shall continue to meet] on a monthly basis.

(3) Completion of the first phase of the continuing education option allows the candidate to receive first renewal of the candidate’s certificate beginning June 30, 2002.

(3) Payment of seminar tuition, [i]

(a) Tuition for the on-line module provided by the Education Professional Standards Board shall be $150; and [1]

2. The on-line module fee shall be paid to the Education Professional Standards Board at the time of enrollment as indicated in the on-line enrollment application.

(b) Tuition for the cohort meetings shall be $600; and [1]

2. The cohort meeting fee shall be paid to the approved seminar sponsor.

(c) Seminar tuition shall be nonrefundable.

2. A cohort meeting fee may be transferred to another seminar sponsor upon agreement between both sponsors.

(4) An individual job-embedded professional development plan shall be designed by the teacher and [The plan shall]:

(a) Focus on a professional growth need identified by the teacher with consideration given to the needs identified in the school’s consolidated plan, student assessment results, and community resources;

(b) Include goals correlated to each of the ten (10) experienced teacher standards established in 16 KAR 1:010 and [The goals shall be] directly related to the teacher’s individual professional growth needs established in paragraph (a) of this subsection;

(c) Include a timeline in which the candidate shall complete all phases of the continuing education option. The timeline shall not:

1. Be less than twelve (12) [eighteen-(18) months]; and

2. Be more than four (4) years; and

(d) Be reviewed by the continuing education option coach for the seminar cohort.

1. The continuing education option coach shall:

a. Review the plans using the scoring rubric approved by the Education Professional Standards Board;

b. Provide written feedback on each standard to the teacher regarding the quality of the plan; and

c. Notify the Education Professional Standards Board of all reviewed plans.

2. The teacher may resubmit the plan for an additional review if the continuing education option coach has provided evidence of a deficiency or deficiencies in the plan.

(5) A teacher shall participate in a job-embedded professional development experience with documented outcomes that demonstrate the accomplishment of the established goals.

(b) A job-embedded professional development experience shall include a combination of:

1. Graduate-college coursework;

2. Research;

3. Field-experience;

4. Professional development activities; or

5. Interdisciplinary networking and consultations.

(c) The experience shall be identified in the professional development plan.

(d) The experience may be:

1. A part of an approved school professional development plan; or

2. An experience specifically needed by the teacher.

(6) The evidence of accomplishment of the goals identified in the plan shall be documented in a portfolio.

(b) The portfolio shall be presented to the Education Professional Standards Board for review and scoring.

(c) The documentation in the portfolio shall provide evidence:

1. That all experienced teacher standards have been met;

2. Of the effects on student learning; and

3. Of the professional growth over time in:

a. Content knowledge;

b. Instructional and student assessment practices; and

c. Professional leadership and publication skills.

(d) The portfolio shall be presented using a variety of mediums, which may include video recordings.

(e) The portfolio shall be submitted to the Education Profes-
sional Standards Board at least one (1) year in advance of the expiration date of the teacher’s certificate.

(f) The portfolio shall be submitted in either:
1. A traditional paper format with videotape or digital video disc (DVD) hard copy; or
2. An electronic format.

(g) A portfolio shall not exceed three (3) four (4) inch binders in size or its electronic equivalent.

Section 4. (1)(a) Initial application for the continuing education option program shall be made through a seminar sponsor approved by the Education Professional Standards Board.

(b) The approved seminar sponsor shall report all enrolled applicants to the Education Professional Standards Board.

(2) An enrolled applicant shall register on-line at www.KyEducators.org for the on-line continuing education option plan building module established in Section 3(2) of this administrative regulation.

Section 5. (1) A team of two (2) readers approved by the Education Professional Standards Board shall review and score the continuing education portfolio.

(2) The readers shall be selected by the Education Professional Standards Board from a cadre of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and the Kentucky Department of Education staff.

(3) The two (2) person reading team shall:
(a) Include a teacher certified in the same grade range and content area as the continuing education option candidate;
(b) Use a scoring rubric that is based on the experienced teacher standards and indicators to review and score the portfolios;
(c) Recommend to the Education Professional Standards Board prior to the expiration date of the certificate:
1. The results of the review process, and
2. Be trained by the Education Professional Standards Board to score the portfolios in a consistent and reliable manner.

(4) If the two (2) person reading team cannot reach consensus in the review process, a chief reader employed by the Education Professional Standards Board shall score the portfolio and report results to the Education Professional Standards Board.

(5)(a) If the teacher’s portfolio does not show evidence that all ten (10) experienced teacher standards have been met, the teacher may resubmit a partial portfolio for resoring, which shall contain documented evidence on the unmet standard or standards.

(b) The resoring process shall follow the same procedures as the initial scoring process established in this section of this administrative regulation.

(c) The teacher shall receive feedback from the initial scoring regarding additional evidence that may be needed to show that goals were accomplished and that all experienced teacher standards were met.

Section 6. (1) A teacher following the continuing education option to the fifth-year program for certificate renewal and rank change shall complete the program by the end of the second certificate renewal period.

(2)(a) For the first renewal, the teacher shall show evidence of completion of phase one (1) of the continuing education option [the development of a professional development plan]; and
(b) Evidence of meeting a minimum of five (5) experienced teacher standards.

Section 7. Payment of Fee for Scoring the Portfolio. (1) A scoring fee of $120 shall be assessed to each continuing education option candidate.

(2) The fee shall be used to pay expenses for the actual cost of administration of the continuing education option program including the costs associated with the following:
(a) The evaluation of approved seminar provider programs;
(b) Training the continuing education option coaches who lead the seminars;
(c) Training and compensating the portfolio reading team members; and
(d) The initial scoring of the portfolio.

(3) Payment shall be made to the Education Professional Standards Board.

(4) The full fee shall be due at the time that the portfolio, or parts thereof as stipulated in Section 6(2) of this administrative regulation, are submitted to the Education Professional Standards Board for scoring.

(5) The initial scoring fee shall provide for one (1) scoring of all parts of the portfolio.

(b) A fee of $120 shall be assessed for each unmet standard that requires resoring.

(b) The resoring fee, if applicable, shall be paid to the Education Professional Standards Board.

(c) The resoring fee, if applicable, shall be paid at the time that the revised portfolio is submitted for resoring.

Section 8. (1) A teacher who submitted a professional development plan prior to June 30, 2002 shall have until December 31, 2004 to complete the continuing education option program.

(2) If the teacher fails to complete the program by December 31, 2004, the teacher shall forfeit all fees and reapply to participate under the revised guidelines.

(3)(a) A continuing education option candidate who enrolled prior to June 30, 2002 shall be notified by the Education Professional Standards Board that his portfolio shall be completed by December 31, 2004.

(b) The notification shall be by registered mail.

(c) The candidate’s portfolio shall be scored using the rubric in effect when the candidate [he] enrolled in the continuing education option program.

(d) The candidate shall not be charged an additional fee for resoring a previously submitted portfolio.

(e) The candidate shall be provided an opportunity to participate in a cohort established in Section 3 of this administrative regulation.

(f) The candidate shall be offered coaching by an approved continuing education option coach.

Section 9. (1) Portfolios shall be scored by the Education Professional Standards Board on a quarterly basis.

(2) A teacher shall have been enrolled in the continuing education option program for at least twelve (12) [eighteen (18)] months prior to submission of the portfolio to the Education Professional Standards Board for scoring.

(3) A teacher shall submit a portfolio to the Education Professional Standards Board for initial scoring:
(a) Between January 1 and January 15;
(b) Between April 1 and April 15;
(c) Between July 1 and July 15; or
(d) Between October 1 and October 15.

(4) The date of portfolio submission shall be either:
(a) The day the portfolio is hand-delivered to the Education Professional Standards Board offices; or
(b) The date of the postmark.

(5) A portfolio that requires resoring shall be resubmitted in accordance with the schedule established in subsection (3) of this [the] section.

(6) All portfolios shall become the property of the Education Professional Standards Board.

(7)(a) The Education Professional Standards Board shall provide electronic tracking of all portfolios to identify cases of plagiarism.

(b) Instances of plagiarism shall be reported to the Education Professional Standards Board for disciplinary action.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2004 at 1 p.m. at the offices of the Education Professional
Standards Board, 100 Airport Road, Third Floor, Conference Room B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 20, 2004, five weekdays 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 not 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. 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Susan Leib, Education Professional Standards Board, 100 Airport Road, Third Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda D. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies requirements for maintaining professional school certificates through the continuing education option.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.030 govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility for establishing the requirements for obtaining and maintaining a certificate. KRS 161.095 requires the Education Professional Standards Board to establish procedures for school professionals to maintain their certificates by successfully completing meaningful continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.028 requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030 restates the responsibility of issuing certificates to teachers and other school personnel with the Education Professional Standards Board. KRS 161.095 requires the Education Professional Standards Board to establish administrative regulations for school professionals to maintain their certificates by successful completion of meaningful continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets the requirements for maintaining a certificate through the continuing education option as required by KRS 161.095.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments modify various sections for clarity, establishes that the first phase of the continuing education process must be completed for the first renewal of a candidate’s certificate, changes from 18 to 12 months the minimum period during which work is to be completed, and adds language permitting the Education Professional Standards Board to sponsor seminars in locations that would otherwise not be able to offer local seminars to candidates.

(b) The necessity of this amendment to this regulation: The amendment aligns the continuing education option with current practice, and allows more opportunities for candidates to take advantage of this option. Modification of “phase one” language clarifies what actions are required to renew a certificate for the first time. Allowing the Educational Professional Standards Board to sponsor required seminars in regions that choose not to will allow candidates across the Commonwealth to take advantage of renewing their certificates through the continuing education option with minimal geographically-based inconvenience. Finally, decreasing the minimum amount of time for completion of work from 18 to 12 months will expedite the renewal process for those candidates who are able to work through the first phase more quickly.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.020, 161.028, and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and line responsibility for establishing the requirements for obtaining and maintaining a certificate. KRS 161.095 requires the Education Professional Standards Board to establish a continuing education option for certificate maintenance and renewal. The amendments establish and clarify the requirements for achieving certificate renewal through the continuing education option.

(d) How the amendment will assist in the effective administration of the statutes: The amendments clarify language and procedures for achieving certificate renewal through the continuing education option, allows the Education Professional Standards Board to sponsor required seminars in locations that would not otherwise offer those seminars to local candidates, and allows candidates working more quickly through this option to expedite the renewal process.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 Kentucky school districts and educators seeking certificate renewal.

(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The 176 school districts can be affected by the availability of properly certified teachers. Required seminars will be available to candidates across the Commonwealth, making the continuing education option for renewal more readily available to those interested in pursuing this option. Those candidates working quickly through the first phase of this option will be able to avoid delays.

(g) Provide an estimate of how much it will cost to implement this administrative regulation: (i) Initially: No additional agency funds allocated or necessary for implementation of regulation. There are no changes to the current fees for the continuing education option.

(h) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation.

(i) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(j) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No additional increases in fees or funding will be necessary.

(k) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes fees for the components of the continuing education option, but the amendments do not change those previously established fees.

(l) TIERING: Is tiering applied? No, tiering does not apply since all candidates for each certificate will be held to the same standard.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

200 KAR 2:006. Employees’ reimbursement for travel.

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
(2) "Agency head" means the elected or appointed head of a budget unit.

(3) "Approval" means approval granted in either written or electronic format.

(4) "Cabinet" means the Finance and Administration Cabinet.

(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.

(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5:021.

(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.

(8) "Lodging receipt" means any preprinted invoice, from a hotel or motel, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(9) (7) "Others in the official service of the commonwealth" means individuals who are not state employees as defined in KRS Chapter 18A, but who are traveling on official business for the commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request and does not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the commonwealth.

(10) (8) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(11) (8) "Residence" means address of the employee designated in the official records of the Department of Personnel [Cabinet].

(12) (10) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(13) (4) "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

(14) "Subsistence and incidental receipt" means an itemized receipt for meals or incidental expenses showing the date of service and amount charged used in the establishment.

(15) (42) "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government, except state-supported universities. It shall not apply to the Legislative and Judicial branches and their employees.

(2) Enforcement. (a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:
   1. Identify a travel policy which establishes whether reimbursement is being requested based on Section 7 or 8 of this administrative regulation;
   2. Prior to trip, create a Travel Authorization (TE, TEO, TEC, or TEO) document, if required;
   3. After travel, create a Travel Payment Voucher (TP or TPI) document for reimbursement of business related expenses;
   4. Maintain records and receipts to support his claim; and
   5. Provide himself with sufficient personal funds to defray his travel expense.

(c) The secretary or his designee may:
   1. Disallow, or reduce the amount of a claim that violates the provisions of this administrative regulation; or
   2. Require written justification for amounts claimed by an agency for its employee.

(d) The secretary or his designee may authorize reimbursement for an employee's actual and necessary expenses for authorized travel if the head of the agency, or his designee, submits a written determination that the reimbursement is:
   1. Required to avoid an undue economic hardship on the employee or
   2. Economically advantageous for the commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be final and conclusive.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned, or is stationed at a new location two (2) months, the new location shall become that employee's official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Canada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary's Order 597-451.

(2) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (3), (4), and (5) of this section.

(3) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEO) document.

(4) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

(5) For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:
   (a) The agency head or a designated representative;
   (b) The secretary or a designated representative; and
   (c) The governor or a designated representative.

(6) A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before start of travel.

Section 5. Transportation. (1) Economy required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2. a. Tickets prepaid by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

b. Tickets purchased through the Internet shall be paid by the traveler and reimbursed on his Travel Payment Voucher (TP or TPI).

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.
4. Agencies shall be billed monthly by the charge card company.
5. Related payments shall be processed on Vendor Payment Voucher (P1) document.

(2) State vehicles. State owned vehicles with their credit cards shall be used for state business travel when available and feasible. Mileage payment shall not be claimed if state owned vehicles are used.

(3) Privately owned vehicles. Mileage claims for use of privately owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.
(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.
(2) Facilities providing special government rates or commercial rates shall be used if feasible.

(3) State owned facilities shall be used for meetings and lodging if available, practicable and economical.

(4) Location. Cost for lodging within forty (40) miles of the claimant’s official work station or home shall be reimbursed if approved in advance by the agency head, or a designated representative.

(5) Group lodging, by contract.
(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.

(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.

(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.

(d) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the commonwealth.

(e) Payment shall be made to the hotel, motel, or other establishment.

(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-tax number assigned by the Department of Revenue (Cabinet) shall be specified on the payment document.

(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on Travel Payment Voucher (TP or TPI) document.

(8) State parks. A state agency or institution using state park facilities may pay for rooms and meals by an Internal Travel Voucher (ITI) document to transfer funds, within the limits of this administrative regulation.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:
(a) Governor;
(b) Governor’s staff;
(c) Lieutenant governor;
(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(e) Elected constitutional officers;
(f) Cabinet secretaries;
(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;
(h) Members of statutory boards and commissions; and
(i) Others in the official service of the commonwealth.

(2) Lodging.
(a) Except as provided in paragraph (b) of this subsection, a state officer, or employee shall be reimbursed for the actual cost of lodging if the:
1. Lodging is determined to be the most economical; and
2. State officer, or employee has provided the hotel, motel, or other establishment’s receipt to be reimbursed for his travel expenses.

(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.

(3) Subsistence and incidentals.
(a) Breakfast and lunch. A state officer, or employee shall be eligible for reimbursement for subsistence for breakfast and [lunch] -or-dinner] expenses while traveling in Kentucky, if his authorized work requires an overnight stay and absence during the mealtime hours established by paragraph (d) or (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if his authorized work requires an absence:
1. At a destination more than forty (40) miles from his work station and home; and
2. During the mealtime hours established by paragraph (d) or (e) of this subsection.

(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.

(d) Reimbursement for high rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed seven (7) dollars,
2. Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed eight (8) dollars,
3. Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed fifteen (15) dollars.

(e) Reimbursement for high rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - with receipt, not to exceed eight (8) dollars,
2. Lunch: authorized travel 11 a.m. through 2 p.m. - with receipt, not to exceed nine (9) dollars,
3. Dinner: authorized travel 5 p.m. through 9 p.m. - with receipt, not to exceed nineteen (19) dollars.

(f) A state officer or employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.

(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if he is assigned to attend meetings and training sessions.

(h) Gratuities may be reimbursed if:
1. The total payment of the meal and gratuity do not exceed the limits established in paragraphs (d) or (e) of this subsection; and
2. The gratuity does not exceed twenty (20) percent of the cost of the meal.

(i) [Repealed]

(j) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

(4) Transportation expenses.
(a) Reimbursement for authorized use of a privately owned
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vehicle shall:
1. Be made at the rate of thirty-two (32) cents per mile; and
2. Not exceed the cost of commercial coach fare.

(b) Mileage for in-state travel shall be based on the "Kentucky Official Highway Map". Out of state mileage shall be based on the most recent edition of the "Rand McNally Road Atlas".

(c) Reimbursement for the actual cost of commercial transportation shall be made upon submission of receipts with the Travel Payment Voucher (TP or TP1).

(d) Reimbursement for use of privately owned aircraft shall be made if, prior to use, written justification was submitted to and approved by the agency head, or a designated representative.

(e) A maximum of twenty (20) [twelve (12)] dollars per night for parking or camping charges for camping vehicles shall be reimbursed.

(f1) Actual parking, bridge and highway toll charges shall be reimbursed.
2. A toll receipt for authorized in-state travel by two (2) axle vehicles shall not be required.

(g) Reimbursement shall be made for reasonable incidental expenses [charges] for:
1. Baggage handling;
2. Delivery of baggage to or from a common carrier, lodging or storage; and
3. Overweight baggage charges, if the charges relate to official business.

5(a) Registration fees required for admittance to meetings shall be reimbursed.

(b) If a registration fee entitles the registrant to meals, claims for those meals shall be reduced accordingly.

5(a) Telephone and telegraph costs for necessary official business shall be reimbursed.

(b) Telephone calls to agency central offices shall be made through:
1. Agency 800 and 888 numbers, if available;
2. A state government telephone credit card; or
3. Lowest available service.

7 Other incidental expenses may be allowed by the agency head or his designee if they are determined to be necessary expenses of official travel.

Section 8. Actual and Necessary Expenses. (1) The following persons shall be eligible for actual and necessary expenses:

(a) Governor;
(b) Governor's staff;
(c) Lieutenant governor;
(d) Elected constitutional officers;
(e) Cabinet secretaries;
(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada;

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the commonwealth.

(2) Actual and necessary expenses of official business travel shall be reimbursed only upon submission of receipts. Items of expense not documented with a receipt shall not be reimbursed [for items over ten (10) dollars].

(b) Actual and necessary expenses for official business travel shall include:
1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.

(c) A credit card receipt shall be accepted for a meal if the receipt prepared by the establishment clearly shows that it is a receipt for a meal.

(d) Reimbursement for official use of a privately owned vehicle shall:
1. Be thirty-two (32) cents per mile; and
2. Not exceed the cost of commercial coach fare.

(e) The governor and cabinet secretaries may be reimbursed for actual and necessary costs of entertaining official business guests, upon certification of these expenses to the secretary or his designee.

2. The secretary or his designee may:
   a. Question a claim for reimbursement; and
   b. Reduce the amount to be reimbursed, if he determines that it is excessive.

(f) An employee of the Economic Development Cabinet or the Commerce [Tourism] Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the commonwealth if the costs were:
1. Related to the promotion of industry, travel, or economic development;
2. Substantiated by receipts; and
3. Certified by the head of the cabinet.

Section 9. Mileage. (1) Mileage commuting between home and work station shall not be paid.

(2) If an employee's point of origin for travel is the employee's residence, mileage shall be paid for the shorter of mileage between:

(a) Residence and travel destination; or
(b) Work station and travel destination.

(3) Vicinity travel, and authorized travel within a claimant's work station shall be listed on separate lines on the Travel Payment Voucher (TP or TP1) document.

Section 10. Travel Documents. (1) Travel software shall have three (3) types of authorizations:

(a) TE or TE1 for in-state travel;
(b) TEO for out-of-state travel; and
(c) TEC for out-of-country foreign travel.

(2) A traveler shall create:

(a) Travel authorization (TE or TE1) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.

(b) Travel authorization (TEO) document for an out-of-state trip.

(c) Travel authorization (TEC) document for an out-of-country trip.

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official service of the commonwealth shall be requested on:

(a) A Vendor Payment Voucher (P1) document; or
(b) A Travel Payment Voucher (TP or TP1) document.

(5) A Travel Payment Voucher (TP or TP1) document shall be used to claim reimbursement for travel expenses.

(6) The Travel Payment Voucher (TP or TP1) document shall be limited to the expenses made by one (1) person for:

(a) Himself; and
(b) If applicable, another person:
   1. Who is a ward of the commonwealth; or
   2. For whom he is officially responsible.

(7) A Travel Payment Voucher (TP or TP1) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:

(a) Name; and
(b) Status or official relationship to the claimant's agency.

(8) A Travel Payment Voucher (TP or TP1) document shall be submitted:
1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status for an extended period.

(b) A Travel Payment Voucher (TP or TP1) document shall include:

1. Social Security number of the claimant; and
2. Purpose of each trip.

(c) A Travel Payment Voucher (TP or TP1) document shall be signed and dated, or entered electronically and approved by the:

1. Claimant; and
2. Agency head or authorized representative.

(d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TP1) may include expenses for six (6)
months of a fiscal year.

(e) [(9)(a)] A Travel Payment Voucher (TP or TPI) document shall be:
1. Legibly printed in ink or typed; or
2. Processed electronically through travel software.
(b) A receipt shall provide the following information for each expense:
1. Amount;
2. Date;
3. Location; and
4. Type.
(c) Receipts shall be maintained at the agency if documents are processed electronically.
(d) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Travel Payment Voucher (TP or TPI) document (1999);
(b) Travel Authorization (TE or TAI) document for in-state travel (1999);
(c) Travel Authorization (TEO) for out-of-state travel (1999);
(d) Travel Authorization (TEC) for out-of-county travel (1999);
(e) Vendor Payment Voucher (PV) (1999);
(f) Internal Travel Voucher (ITV) document (1999);
(g) Kentucky Commercial Highway Map (2004 [1998]);
(h) Rand McNally Road Atlas (2001 [1998]); and
(i) Secretary's Order SR-451, November 1, 1996.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: March 11, 2004
FILED WITH LRC: March 17, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on May 25, 2004, at 8:30 a.m. in Room 396 Capitol Annex, Frankfort, Kentucky 40601. Any person interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by May 18, 2004, 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 this 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. Written comments shall be accepted through June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Ed Ross, Controller, Finance and Administration Cabinet, Room 393 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross
(1) Provide a brief summary of:
(a) What this administrative regulation does: Reimburses state employees' travel expenses.
(b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate administrative regulations relating to eligibility, requirements, rates and forms for reimbursement of travel expenses and other expenses incidental to official activities out of the State Treasury.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel and other official expenses out of the State Treasury.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel and other official expenses out of the State Treasury.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the regulation will change this existing administrative regulation: It will correct and clarify existing language and necessary document references, increase camping vehicles reimbursement, and reduce "no receipt" limits.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct and clarify existing language and necessary document references, increase camping vehicles reimbursement, and reduce "no receipt" limits.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel expenses and other official expenses out of the State Treasury.
(d) How the amendment will assist in the effective administration of the statutes: It will correct and clarify existing language and necessary document references, increase camping vehicles reimbursement, and reduce "no receipt" limits.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative or judicial branches and their employees.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Employees' reimbursement for overnight camping will be increased by $5. Employees will be required to submit "actual and necessary" expense receipts for items over $5, a decrease from the previous requirement of receipts for items over $10.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Administrative costs should be minimal.
(b) On a continuing basis: Administrative costs should be minimal.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Various governmental sources.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

BOARD OF HAIRDRESSERS AND COSMETOLOGISTS

(Amendment)

201 KAR 12:200. Requirements for continuing education for renewal of license.

RELATES TO: KRS 317A.050(8), 317B.030(1)
STATUTORY AUTHORITY: KRS 317A.050(8), 317B.030(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050(8) requires a cosmetologist, cosmetology instructor or nail technician to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation. KRS Chapter 317B Section 5(1) requires an esthetician and esthetic instructor to provide proof of continuing education for renewal of license. This administrative regulation establishes the requirements for sponsoring a continuing education program and for providing proof of attendance at a continuing education program.

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Section 1. A sponsor of a continuing education program shall submit a completed "Application for Approval of Continuing Education Program" form to request approval from the board for a program. The application form shall:
(a) Include the:
   (1) Title of the program;
   (2) Name, address, and telephone number of the sponsoring organization or individual;
   (3) Number of clock hours for which approval is requested;
   (4) Cost of the program to the attendee;
   (5) The program's date, location, and time;
   (6) Objective of the program;
   (7) Name of the instructor;
   (8) Manner of presentation to indicate whether the program is
      a. Lecture;
      b. Demonstration;
      c. Panel; or
      4. Hands-on participation program; and
      (i) Plan for program evaluation;
      (2) Be signed by the sponsor to indicate that the sponsor agrees to:
         (a) Accurately record attendance at each presentation;
         (b) Complete a record of attendance confirming the number of
             clock hours actually attended for each attendee; and
         (c) Submit a list of attendees within thirty (30) days after the
             program to the board office; and
      (3) Be accompanied by a copy of the:
         (a) Promotional advertisement for the program;
         (b) Instructor's biography and list of credentials;
         (c) Course outline; and
         (d) Evaluation sheet.

Section 2. An application for approval of a continuing education program shall be submitted to the office of the board at least sixty (60) days prior to the starting date of the program. The board shall approve or deny the request in writing within thirty (30) days of receipt of the application by the board.

Section 3. (1) The program shall consist of an organized program of learning which:
   (a) Contributes directly to the competency of the licensee;
   (b) Pertains to subjects related to the theory, management and
       practice of cosmetology, nail technology, or esthetics; and
   (c) Pertains to the health, safety, welfare, and protection of the
       public including sanitation, sterilization, chemical waste disposal,
       safety in the work place, first aid, blood borne pathogens, airborne
       pathogens, and HIV/AIDS education.
   (2) A program that meets the requirements established in subsection (1) of this section shall be approved by the board if it is provided by:
      (a) An American Red Cross Chapter;
      (b) The Cabinet for Health Services;
      (c) The Kentucky Labor Cabinet, Division of Education and
          Training; or
      (d) The Kentucky State Board of Nursing; or
      (e) American Heart Association.
   (3) A program shall be limited to a class size appropriate to the classroom or facility.

Section 4. A program shall specify the course objectives, content, prerequisites, requirements, and the number of continuing education hours to be earned. The information shall be specified in all promotional materials.

Section 5. A program shall:
(1) Be generic product related; and
(2) Not be used to promote, sell or advertise a product.

Section 6. (1) A sponsor shall be:
(a) A private or vocational technical school of cosmetology;
(b) An association or organization whose membership consists
    of licensees of the board;
(c) A college, university, or other institution of higher education
    recognized by the Kentucky Council on Postsecondary Education
    or the Kentucky Community College, Trade and Technical Schools;
(d) An individual who:
   1. Holds an active cosmetologist license, instructor of cosme-
      tology license or nail technicians license; and
   2. Has special education, training and experience in cosmetol-
      ogy;
(e) A person who has a license, degree, special education, training or experience relating to the subject matter of the program; or
   (f) A state agency program; or
   (g) A manufacturer or distributor.
   (2) (a) A manufacturer or distributor product show shall not be
        approved as a continuing education program.
   (b) A manufacturer or distributor product class shall be ap-
       proved if the requirements established in this administrative regu-
       lation are met.
   (e) Alcoholic beverages shall not be served, sold or consumed
       in the classroom.

Section 7. [8] Academic Coursework. Successful completion of one (1) three (3) hour course shall satisfy the continuing education requirement established by KRS 317A.050(8) if the:
(1) Course is completed within the license renewal period;
(2) Course is relevant. A course shall be considered relevant if
   the course:
   (a) Is biology, chemistry, psychology, health science, or busi-
      ness; or
   (b) Relates to the practice of the licensee; and
   (3) Licensee submits an original transcript with the seal of the college or university affixed with the application for license renewal.

Section 8. [9] (1) In order to receive credit for attendance at a program, a licensee shall:
(a) Complete a "Record of Attendance for Continuing Educa-
    tion Credit" form at the end of the program;
(b) Submit one (1) copy of the form to the program's registra-
    tion desk at the end of the program; and
(c) Submit one (1) copy of the form with the licensee's renewal
    application.
   (2) The form shall indicate the:
      (a) Program title;
      (b) Name of the sponsoring organization or individual;
      (c) Date, location, and number of hours of the program; and
      (d) Licensee's:
         1. Name;
         2. Address;
         3. Phone number; and
         4a. Social Security number; or
         b. License number.

Section 9. [10] (1) A cosmetologist or nail technician not currently
working in a salon may choose to let his or her expire and may restore that license within five (5) years by obtaining six (6)
hours of continuing education and paying a restoration fee of fifty
(50) dollars in accordance with KRS 317A.050, Section 11.
(2) A licensed esthetician not currently working in a salon may choose to let his or her license expire and may restore that license within five (5) years by obtaining the required continuing education and paying the restoration fee set in 201 KAR 12:220.

Section 10. [14+] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Approval of Continuing Education Program" (September 13, 1996 edition); and
(b) "Record of Attendance for Continuing Education Credit" (September 13, 1996 edition).
(2) These forms may be inspected, copied, or obtained, subject
to applicable copyright law, at Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chairman
APPROVED BY AGENCY: April 8, 2004.
FILED WITH LDC: April 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the offices of the board, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 five workdays 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dena Moore, Executive Secretary, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4202, fax: (502) 564-0481.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dena Moore, Executive Secretary
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the requirements for sponsoring a continuing education program and for providing proof of attendance at a continuing education program.
(b) The necessity of this administrative regulation: To assure all sponsors meet the qualifications to teach continuing education programs and to assure the attendance of all licensees are properly recorded and submitted to the office of the board.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require licensees to provide proof of continuing education for renewal of license.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Assures all sponsors meet the same qualifications to teach continuing education programs.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will allow manufacturers and distributors to be providers of continuing education and will allow a program that is not product generic to be approved.
(b) The necessity of the amendment to this administrative regulation: To conform with HB 441, SFA 2.
(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 317A was amended to allow credit for educational programs sponsored by professional and trade groups that are presented as part of the trade show agenda and allow programs that focus on specific or brand-name products or promote or advertise a particular product to be approved for continuing education credit.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will require all continuing education providers to complete an application for approval and provide required documentation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 13,000 licensed active cosmetologists; and approximately 200 continuing education providers.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: There will be no impact by the amendment.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: Due to an increase in applications filed, an additional staff person may be needed.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board is self-sustaining and operates from fees paid by licensees and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase is fees is needed. There has not been a fee increase in over 23 years and service levels are not being maintained.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. Tiering was not applied as all sponsors of continuing education are required to meet the same requirements.

COMMERCIAL CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:130. Live bait for personal use.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.450

STATUTORY AUTHORITY: KRS 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations establishing the procedures for taking fish and crustaceans in the areas from which fish and crustacean may be taken. This administrative regulation establishes the procedures for the taking of live bait and restricts use to personal use.

Section 1. Definitions. (1) "Live bait" means minnows, shad, herring, crayfish, salamanders, frogs except bullfrogs, tadpoles, native lampreys, Asiatic clams (Corbicula sp.) and aquatic organisms except mussels.
(2) "Minnows" means fishes under six (6) inches in length, except basses (largemouth, small mouth or Kentucky), rock bass or goggle-eye, trout, crappie, walleye, sauger, pikes, white bass, yellow bass, rockfish (saltwater striped bass) and muskellunge, or any hybrids of the above.

Section 2. Live bait shall be taken with the following gear for personal use. Other species except live bait taken with this gear shall be returned immediately to the water:
(1) Seines: Maximum size ten (10) feet long, four (4) feet deep, one-fourth (1/4) inch mesh, taking permitted statewide; maximum size thirty (30) feet long, six (6) feet deep, one-fourth (1/4) inch mesh, taking permitted in Ohio and Mississippi Rivers and Kentucky and Barkley Lakes.
(2) Minnow traps: Maximum size three (3) feet long, eighteen (18) inches diameter, one (1) inch openings for catching, taking permitted statewide.
(3) Dip nets: Maximum size three (3) feet diameter, taking permitted in Ohio, Tennessee and Mississippi Rivers, Cumberland River below Barkley Dam, Kentucky River below Lock #14, and all lakes over 1,000 acres.
(4) Sport cast nets: The maximum size shall be twenty (20) feet diameter, one (1) inch bar mesh, taking permitted statewide except for the following waters:
(a) Trout streams and tailwaters listed in the current Kentucky Department of Fish and Wildlife's Fishing and Boating Guide (publication "Kentucky Trout-Waters");
(b) Lakes with a surface area of less than 500 acres; and
(c) Taking shall be permitted in Crocus and Marrowbone...
Creeks, Cumberland County, but the mesh size shall be in one (1) inch bar mesh. Crocus Creek shall be closed to cast nets for an area extending from its mouth to fifty (50) yards upstream. All other tributaries of the Cumberland River below Wolf Creek Dam to the Tennessee state line shall be closed to cast nets.

Section 3. No mussels shall be taken for use as bait except Asiatic clams (Corbicula s.p.). A sport fishermen shall have in his possession no more than:

(1) 500 minnows;
(2) 500 crayfish;
(3) Twenty-five (25) dusky (100) salamanders (spring lizards) of the genus Desmognathus;
(4) Five (5) [100] frogs (other than bullfrogs);
(5) Five (5) [100] tadpoles;
(6) 100 native lampreys (mud eels);
(7) 500 aquatic invertebrates other than mussels;
(8) 500 shad;
(9) 500 herring;
(10) Any number of Asiatic clams (Corbicula s.p.).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Eastern time.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 canceled. 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 by June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 4060, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the procedures for the taking of live bait and restricts its use to personal use.
(b) The necessity of the administrative regulation: To protect aquatic species from overharvest.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations consistent with KRS Chapter 150.
(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations for taking fish. This administrative regulation prohibits the taking of live bait and restricts use to personal use only.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment reduces the possession limits of dusky salamanders, frogs and tadpoles.
(b) The necessity of the amendment to this administrative regulation: To protect native aquatic species from overharvest and curb the illegal trade of these species. These limits were established in conjunction with the Division of Wildlife.
(c) How does the amendment conform to the authorizing statutes: See "C" above.
(d) How the amendment will assist in the effective administration of the statutes: See "D" above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who have caught dusky salamanders, frogs and tadpoles in the past are affected by this amendment as they will now be required to possess fewer of those species. It is not determinable how many persons catch these species and will be affected by this amendment.
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: See number three (3) above. This regulation applies to live bait for personal use. Commercial dealers and businesses can still possess these species if the dealers comply with 301 KAR 1:132.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations, including possession limits of aquatic and wildlife species.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.
(9) TIERING: Is tiering applied? Tiering was not used because all persons who obtain dusky salamanders, frogs and tadpoles for personal use will be restricted to these possession limits.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:171. Grass carp supplier [transportation, propagation, rearing and stocking] requirements.

RELATES TO: KRS 150.0’0, 150.025, 150.180, 150.990
STATUTORY AUTHORITY: KRS [43A:366] 150.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish the procedures for transporting and conserving wildlife. This administrative regulation establishes the procedures for acquiring, transporting and producing triploid grass carp.

Section 1. Definitions. (1) "Triploid grass carp" means a fish of the genus and species Ctenopharyngodon idella that is reproductively fertile and has not been genetically altered and therefore has the normal set of somatic chromosomes as determined by blood sample.
(2) "Triploid grass carp" means a fish of the genus and species Ctenopharyngodon idella that is reproductively sterile because it
Section 2. Acquisition of Triploid Grass Carp (Ctenopharyngodon idella) by a Supplier. (1) A person wishing to supply triploid grass carp shall:
(a) Obtain a fish and bait dealers license as established in 301 KAR 1:120;
(b) Obtain a fish transportation permit as established in 301 KAR 1:125 that lists triploid grass carp as the species to be transported;
(c) If the triploid grass carp will be propagated, obtain a fisheries commercial propagation permit as established in 301 KAR 1:115; and
(d) Provide the Division of Fisheries with written assurances on a monthly basis that each grass carp sold or delivered for use in Kentucky waters has been tested and certified by the U.S. Fish and Wildlife Service’s Triploid Grass Carp Certification Program to be a triploid fish. Failure to supply written assurances shall be cause for license and/or permit revocation.

Section 3. Propagation of Triploid Grass Carp. (1) A person shall apply to the Division of Fisheries for a Fisheries commercial propagation permit for propagating triploid grass carp.
(2) A fisheries commercial propagation permit fortriploid grass carp shall not be issued until the Division of Fisheries personnel have made an on-site inspection of the applicant’s propagation facility to determine that adequate containment measures exist to prevent escape from all life stages of any diploid grass carp into public waters.
(3) The Division of Fisheries shall determine and specify the number of broodstock diploid (sterile) grass carp that may be obtained from out-of-state sources.
(4) A person shall utilize the U.S. Fish and Wildlife Service’s Triploid Grass Carp Certification Program to certify all grass carp sold or transported are triploids.
(5) Diploid grass carp resulting from the production of triploids shall be destroyed on site by the propagator.

Section 4. Eradication of Diploid Grass Carp. (1) The Division of Fisheries may take random samples of grass carp shipped into and within Kentucky and from other states held by suppliers. Should diploid (fertile) fish be discovered, all suppliers’ triploid grass carp permits shall be revoked.
(2) The supplier shall also be responsible for removing and destroying all grass carp from the shipment containing diploid fish that were stocked in Kentucky waters, and shall reimburse the pond owner the full purchase price of the fish, including transportation costs.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 canceled. 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 by June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to B. D. Barnezzie, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the procedures for acquiring, transporting and producing triploid grass carp.
(b) The necessity of the administrative regulation: To effectively manage the native fish population of Kentucky by not allowing diploid grass carp to be supplied or propagated in Kentucky.
(c) How does this administrative regulation conform to the authorizing statute: KRS 235.025(1) authorizes the department to promulgate administrative regulations necessary to regulate buying, selling or transporting fish. KRS 150.180(6) states that no person shall import or transport into the state of Kentucky or receive shipment in the state from without the state, any live fish or wildlife without first procuring from the department a written transportation permit. This administrative regulation establishes the requirements for persons who supply triploid grass carp.
(d) How will this administrative regulation assist in the effective
administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025(1) by establishing procedures for persons to supply and propagate triploid grass carp in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment streamlines the existing administrative regulation by defining diploid and triploid grass carp; specifying that the triploid grass carp supplier or propagator has utilized the U.S. Fish and Wildlife Service’s Triploid Grass Carp Certification Program; and specifies the permits that a supplier and propagator of triploid grass carp shall possess.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to conform the regulation to the drafting and formatting requirements of KRS Chapter 13A and update the provisions stated above.
(c) How does the amendment conform to the authorizing statutes: See (c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (d) above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Persons who wish to supply and propagate triploid grass carp in Kentucky will have to abide by this administrative regulation. There are currently fewer than ten persons permitted to supply and propagate triploid grass carp in Kentucky. At least five are Kentucky propagators and five are out-of-state propagators.
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Persons who wish to supply or propagate grass carp will be impacted by this regulation. Persons will be required to supply or propagate only triploid grass carp to ensure that the grass carp do not multiply. Grass carp can have detrimental effects on the native fish populations.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Department of Fish and Wildlife Resources Division of Fisheries oversees the fish propagation and transportation permits. The division will not experience an additional funding burden by implementing this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.
(9) TIERING: Is tiering applied? Tiering was not used because all people who wish to supply and propagate grass carp will be treated the same, they will not be permitted to transport or supply diploid grass carp.

COMMERCE CABINET
Department of Fish and Wildlife Resources

Amendment

301 KAR 1:400. Assessing fish kill damages.

RELATES TO: KRS 150.460(1), (3), 150.990(7)
STATUTORY AUTHORITY: KRS 150.990(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.460(1) and (3) make it illegal for a person to pollute the waters of the commonwealth. KRS 150.990(7) holds [makes] a person who violates KRS 150.460 liable to the department in an amount not to exceed the value of any fish or wildlife killed or destroyed. This administrative regulation establishes the standard the department shall use to determine the replacement value of fish killed in pollution cases.

Section 1. The department shall use the American Fisheries Society Special Publication 30 [24], "Investigation and Valuation of Fish and Freshwater Mussel Kills", to assess the replacement value of fish killed in violation of KRS 150.460(1) or (3).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. until 4:30 p.m.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman

W. JAMES HOST, Secretary

APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing five business 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 canceled. 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 by June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the procedures assessing the damages as a result of fish kills by incorporating by reference the American Fisheries Society Special Publication 30: Investigation and Monetary Values of Fish and Freshwater Mussel Kills.
(b) The necessity of the administrative regulation: To effectively assess damages to be paid as a result of fish kills.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.460(1) and (3) make it illegal for a person to pollute the waters of the commonwealth. KRS 150.990(7) holds a person who violates KRS 150.460 liable to the department for an amount not to exceed the value of any fish or wildlife killed or destroyed.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.990(7) by providing a means by which to assess/calculate damages caused by fish kills.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment simply updates the publication that is used to assess/calculate damages caused by fish kills.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the administrative regulation to reflect the most recent publication used to assess
fish kill damages.
(c) How does the amendment conform to the authorizing statues: See (c) above.
(d) How the amendment will assist in the effective administration of the statutes: See (d) above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected. An undetermined number of people or organizations will cause fish kills each year. To make the assessment fair to all person who cause damage to fish, the damages will be assessed uniformly by using the American Fisheries Society Special Publication 30: Investigation and Monetary Values of Fish and Freshwater Mussel Kills.
(4) Provide an assessment of how the above groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: Persons should be affected minimally, as the new reference is the one recognized publication for assessing fish kill damages.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency to implement this administrative regulation.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The current budget of the Department of Fish and Wildlife Resources Division of Fisheries oversees the fish kills in Kentucky. The division will not experience an additional funding burden by implementing this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.
(3) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.
(9) TIERING: Is tiering applied? Tiering was not used because all people who cause fish kills will have had the same method of calculating damages applied to their case. There will be uniformity in assessing damages.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:049. Small game and furbearer hunting on public areas.

RELATES TO: KRS 150.010, 150.370(1), 150.399, 150.400, 150.410, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish seasons, limits and other requirements for hunting, and to make these requirements apply statewide or to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation. This administrative regulation establishes exceptions on Wildlife Management Areas to statewide small game and furbearer hunting.

Section 1. The provisions of 301 KAR 2:251 and 301 KAR 3:010 shall apply on a Wildlife Management Area unless specified otherwise by this administrative regulation.

Section 2. On a Wildlife Management Area owned or managed by the department:
(1) A person shall wear hunter orange as specified in Section 12 of 301 KAR 2:172 when a firearm is allowed for deer hunting.
(2) The hunter orange requirement in subsection (1) of this section shall not apply to a person hunting:
(a) Waterfowl; or
(b) Raccoon or opossum at night.
(3) Free youth week [weekend]. For seven (7) [two- (2)] consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license. Statewide requirements and bag limits apply.
(4) Free youth trapping week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may trap without a hunting license or permit. Statewide requirements and bag limits apply.

Section 3. Exceptions on Specific Wildlife Management Areas.
(1) Barren River Wildlife Management Area.
(a) Quail and rabbit: closed after December 31. Barren River WMA shall be considered to be entirely within the Eastern Quail Zone.
(b) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not:
1. Hunt with a breech-loading firearm;
2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or
3. Hunt small game with shot larger than number two (#2).
(2) Beaver Creek Wildlife Management Area, including private holdings.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearer: December 5 through December 31.
(3) Big South Fork National River and Recreation Area, McCreary County.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Cane Creek Wildlife Management Area, including private holdings.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearer: December 5 through December 31.
(5) Cedar Creek Lake Wildlife Management Area:
(a) Rabbis: closed after December 31;
(b) Squirrels: open under statewide season; and
(c) Closed to all other small game and furbearer hunting.
(6) Central Kentucky Wildlife Management Area:
(a) Closed to small game and furbearer hunting except squirrels.
(b) A person shall not allow a dog to be unleashed:
1. April 1 until the third Saturday in August; or
2. At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, or during an authorized field trial.
(7) Clay Wildlife Management Area. The area shall be closed for four (4) consecutive days beginning on the first Friday in December to all hunting except archery deer hunting and the pheasant quota hunt specified in Section 4 of this administrative regulation.
(a) Quail and rabbit: closed after December 31.
(b) Grouse: October 1 through December 31.
(c) Pheasant: beginning on the Tuesday following the pheasant quota hunt through December 31, pheasant shall be a legal game species and may be taken on this area with a valid Kentucky hunting license. The daily limit shall be three (3) birds of either sex per hunter.
(d) Quota fox hunting field trials:
1. There shall be a maximum of two (2) four (4) day events per calendar year.
2. Participants shall be limited to 200 per event.
3. The area shall be closed to nonparticipants.
4. Participants shall wear laminated identification badges issued by the department during the event and return the laminated badges at the close of the event to department personnel.
(8) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area.
(a) Quail and rabbit: closed after December 31.
(b) A person shall not allow a dog to be unleashed from April 1 until the third Saturday in August.
(9) Daviess County Wildlife Management Area.
hunting for small game and furbearers.

(10) Fleming Wildlife Management Area.
   (a) Quail and rabbit; closed after December 31.
   (b) Grouse; October 1 through December 31.

(11) Green River Lake Wildlife Management Area. The area shall be closed for four (4) consecutive days beginning on the third Friday in November. In all hunting except archery deer hunting and the pheasant quota hunt specified in Section 4.
   (a) Quail and rabbit; closed after December 31.
   (b) Grouse; closed to hunting and trapping.
   (c) Pheasants: beginning on the Tuesday following the pheasant quota hunt through December 31, pheasant shall be a legal game species and may be taken on this area with a valid Kentucky hunting license. The daily limit shall be three (3) birds of either sex per hunter.


(14) Lake Cumberland Wildlife Management Area.
   (a) Grouse; October 1 through December 31.
   (b) Quail and rabbit; closed after December 31.

(15) Mill Creek Wildlife Management Area, including private inholding.
   (a) Quail and rabbit; closed after December 31.
   (b) Furbearer; December 6 through December 31.


(17) Peal Wildlife Management Area.
   (a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.
   (b) Furbearer trapping: December 1 through 10, water sets only.
   (c) Quail and rabbit; closed after December 31.

(18) Pennyville Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(19) Pioneer Weapons Wildlife Management Area. A person shall not:
   (a) Hunt with a breech-loading firearm.
   (b) Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine.
   (c) Hunt small game with shot larger than number two (#2).

(20) Robinson Forest Wildlife Management Area. Hunting is permitted under the requirements of 301 KAR 4:200.

(21) Taylorsville Lake Wildlife Management Area.
   (a) The area east of Van Buren Boat Ramp shall be closed to public access from November 1 through the last day of February.
   (b) Quail and rabbit; closed after December 31.

(22) Pennyville-Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(23) West Kentucky Wildlife Management Area, McCracken County.
   (a) A person shall not hunt on a tract designated by numbers followed by the letter "A".
   (b) Quail and rabbit:
      1. Tracts 2, 3, 6 and 7: closed after December 31.
      2. Tracts 1, 4, and 5: From one-half (1/2) hour before sunrise until 1:00 p.m., local time, January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data. A hunter shall report daily to the area supervisor all hours hunted.
      3. If a tract is closed before January 10, a sign announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.
   (c) A person shall not:
      1. Use a rifle or ball or slug ammunition;
      2. Allow an unleashed dog; or
      3. Operate a vehicle on Tract 6 from February 1 through April 16.


Section 4. Pheasant Quota Hunts. (1) There shall be a pheasant quota hunt on the Green River Wildlife Management Area for three (3) consecutive days beginning the third Friday in November, and Clay Wildlife Management Area for three (3) consecutive days beginning the first Friday in December. There shall be a one (1) day cleanup hunt immediately following each of the hunts for pheasant quota hunters drawn for that particular Wildlife Management Area.

(2) Hunt hours for each day shall be from 9 a.m. to 4 p.m.

(3) During the quota hunts or cleanup hunts, a person shall wear hunter orange as specified in 301 KAR 2:172.

(4) The bag limit per hunter for each day shall be two (2) birds of either sex, except for the cleanup hunt and subsequent days open to pheasant hunting when the bag limit shall be three (3) birds of either sex.

(5) Pheasant quota hunt procedures.
   (a) A person selected for a pheasant quota hunt may hunt on the one (1) day cleanup hunt for that area.
   (b) A person shall apply for a quota hunt drawing through an automated telephone system by calling the number published in the current department Fall Hunting and Trapping Guide from a touch-tone telephone between September 1 and September 30 and shall:
      1. Provide his Social Security number;
      2. Indicate his choice of hunt days; and
      3. Pay a three (3) dollar nonrefundable application fee for each application by:
         a. Check;
         b. Money order;
         c. Visa; or
d. MasterCard.
   (c) A single applicant may request a number of slots, up to five (5), to be a group for which he or she would like to apply. The applicant shall provide his or her Social Security number and a total [Up to five (5) persons may apply as a party by providing a Social Security number and paying the] application fee for each person in the party.
   (d) Persons who have not yet reached their 16th birthday by the date of the hunt shall apply as part of a party that includes at least one (1) adult.
   (e) A person shall not apply more than one (1) time for each hunt.
   (f) The department shall select hunters by a random drawing of all applicants.
   (g) Successfully-drawn hunters shall pay to the department by October 30; a twenty-five (25) dollar per hunter, per day, fee by one (1) of the following methods:
      1. A check or money order with the confirmation number, Social Security number and hunts that are being paid for, written on the check or enclosed with the money order;
      2. Web payment due when the applicant checks drawing results.
   (h) Upon receipt of the check or money order, the department shall issue the appropriate pheasant quota hunt permits.
   (i) A person checking in for a quota hunt shall show:
      1. His department-issued pheasant quota hunt permit;
      2. A valid Kentucky hunting, combination or senior/disabled license, except a person on military furlough for more than three (3) days may show his military identification instead of a license; and
      3. His hunter education card, if required.
   (j) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during
the application period.
(k) A person shall check in and out daily for a pheasant quota hunt at the Green River Wildlife Management Area or Clay Wildlife Management Area.

C. THOMAS BENNETT, Commissioner
RFN FRANK BROWN, Chairman
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 canceled. 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 by June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:
(a) What the administrative regulation does: establishes procedures for hunting small game and furbearer on public areas.
(b) The necessity of the administrative regulation: To effectively manage the small game and furbearer population in Kentucky.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing wildlife and hunting. KRS 150.620 authorizes the department to acquire and subsequently manage public areas for wildlife and recreation.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will establish the seasons and hunting procedures for small game and furbearer hunting on public areas that KRS 150.620 addresses.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment establishes a free youth weekend for seven consecutive days beginning on the Saturday after Christmas. Also, the amendment establishes more efficient procedures for applying for pheasant quota hunts.
(b) The necessity of the amendment to this administrative regulation: To provide more hunting opportunity for the youth of Kentucky.
(c) How does the amendment conform to the authorizing statutes: See "(c)" above.
(d) How the amendment will assist in the effective administration of the statutes: See "(d)" above.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Youth small game hunters will be provided more opportunity for small game hunting. There were approximately 30,117 licensed youth hunters during the 2002 - 2003 license year. Kentucky pheasant quota hunters shall be affected positively as they will now be permitted to have one person apply for a group hunt rather than the entire group.
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Youth hunters shall be impacted positively, as the season for the youth small game increased from two to seven days. Pheasant hunter shall be affected minimally as the amendment streamlines the application procedures.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Division of Law Enforcement will be used to enforce this administrative regulation. Currently, law enforcement officers oversee the wildlife management areas and public lands for compliance with KRS Chapter 150 and Title 301 KAR. The Division of Wildlife oversees the quota hunt procedures for pheasant. The current budget of the Division of Wildlife is sufficient for coordinating the application process.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.
(9) TIERING: Is tiering applied? Tiering was not used because the free youth weekend will apply to all youth that wish to hunt small game and the pheasant quota hunt procedures apply to all applicants.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:081. Transportation and holding of native wildlife.

RELATES TO: KRS 150.015, 150.180, 150.280, 150.290, 150.305, 150.320, 150.330, 150.350, 150.370
STATUTORY AUTHORITY: KRS 150.025, 150.180, 150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 authorizes the department to promulgate administrative regulations to establish the procedures for the propagation and holding of protected wildlife. This administrative regulation is necessary to control the indiscriminate possession of wildlife and to insure that wildlife is humanely and properly cared for, to protect the public and native wildlife from wildlife-borne diseases, and to prevent the introduction of wildlife that might be detrimental to native fauna and flora.

Section 1. Definitions. (1) "Circus" means a traveling public entertainment show consisting of acrobats, clowns, and trained animals, but shall not include a show including wrestling bears or other direct contact between members of the public and inherently dangerous animals.
(2) "Native wildlife" means wildlife which have historically existed or currently exist in the wild in Kentucky without introduction by man, not including naturalized introduced species such as staghorns, house sparrows and Eurasian collared doves.

Section 2. (1) Except as specified in subsection (2) of this section, a person shall not import cpr possess: (a) Alligator snapping turtle (Macrochelys temminckii); (b) Black bear (Ursus americanus); (c) Copperbelly water snake (Nerodia erythrogaster neglecta); (d) Cougar or mountain lion (Felis concolor); (e) Any federally threatened or endangered species; (f) Wild turkey (Meleagris gallopavo); or (g) Wolf (Canis lupus).
(2) The commissioner may allow the importation or possession of the species listed in subsection (1) of this section by circuses or
for legitimate scientific or educational purposes by:
   (a) A zoo that is:
      1. A member of the American Zoo and Aquarium Association;
      or
   2. Designated as the official zoo of a municipality.
   (b) A government agency;
   (c) A college or university; or
   (d) A similar educational or research institution.

Section 3. Taking and Possessing Native Wildlife. (1) A person shall not hold native wildlife in captivity that was not legally taken or possessed.
(2) Except as specified in subsections (6) and (7) of this section, a person holding native wildlife in captivity shall apply for and obtain a permit prior to acquiring wildlife.
(3) A person permitted to rehabilitate native wildlife as specified in 301 KAR 2:075 shall not be issued a commercial or non-commercial captive wildlife permit.
(4) Commercial captive wildlife permit.
   (a) A commercial captive wildlife permit shall be required for persons wishing to sell, offer to sell, trade, or barter native wildlife. A person shall not sell, offer to sell, trade, or barter native wildlife or parts thereof, obtained from the wild.
   (b) A commercial captive wildlife permit shall be renewable annually from the date of issue.
   (c) The commercial captive wildlife permit fee shall be $100 a year.
(5) Noncommercial captive wildlife permits.
   (a) A noncommercial captive wildlife permit is required for persons wishing to possess native wildlife, but do not intend to sell, offer for sale, trade or barter animals.
   (b) A noncommercial captive wildlife permit fee shall be seventy-five (75) dollars and be renewable three (3) years from date of issue.
   (6) Bobwhite quail.
      (a) Fifty (50) or fewer bobwhite quail may be possessed for personal use without a permit, provided the birds are not propagated or sold.
   (b) Proof of purchase should be retained as permission to possess.
(7) Amphibians and reptiles.
   (a) Except as provided for in Section 2(1) of this administrative regulation and this subsection, captive wildlife permits are not required for persons taking or possessing up to five (5) individuals of each species of a native reptile or amphibian. Exception to taking or possessing five (5) individuals of each species:
      1. No limit on snapping and smooth and spiny softshell turtles;
      2. Fifteen (15) per night limit on bullfrogs; and
   (b) There shall not be a limit on the number of individuals of each species possessed by a commercial or noncommercial captive wildlife permit holder, provided the permit holder does not possess more than five (5) wild-caught individuals of each species of amphibian or reptile.
   (c) A captive wildlife permit shall not be required to hold reptiles with a color morphology that is distinctly different from the wild type of the same species of reptile.
(8) Any commercial and noncommercial captive wildlife permit holders keeping native amphibians and reptiles shall retain:
   1. A certificate of origin;
   2. A bill of sale;
   3. Receipted invoice; or
   4. Other evidence of lawful acquisition of each individual of any taxa captively produced or legally obtained from out of state.
(9) Accurate records for animals, including wild-captured, shall be maintained for five (5) years by the permit holder and be available for inspection by a department representative at a reasonable hour. Records shall include:
      1. Common and scientific names;
      2. Number of reptiles or amphibians received or sold;
      3. The birth dates of captive born animals;
      4. The date, location and length of all wild-captured taxa; and
      5. Date of all transactions including the complete name, address and phone number of the person from whom an animal was purchased, including the seller's permit number, or to whom the animal was sold, traded, bartered, or given as a gift.
(8) Transportation permits and certificate of veterinary inspection.
   (a) Prior to entry into Kentucky, a transportation permit shall be obtained for all shipments of wildlife (native and exotic). A person shall be responsible for applying for a transportation permit if he or she:
      1. Receives a shipment of wildlife;
      2. Imports wildlife for his or her own use or possession; or
      3. Transports wildlife into and through the state to a destination outside Kentucky.
   (b) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.
   (c) Individual transportation permits shall be valid for one (1) shipment of wildlife.
(9) Annual transportation permits shall be valid for multiple wildlife shipments for one (1) year from the date of issue. Annual transportation permit holders shall:
   1. Notify the department in writing of any changes or additions subsequent to the original application so that the permit may be amended prior to future wildlife importation; and
   2. Notify the department by telephone Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife of the date of expected shipment, source of the shipment and the species and number being shipped.
   (e) All shipments of wildlife, except for amphibians and reptiles, shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinarian inspection.
(10) Fees.
   1. The individual transportation permit fee shall be twenty-five (25) dollars.
   2. The annual transportation permit fee shall be $250.

Section 4. Applying for Permits. (1) Applications for captive wildlife and transportation permits shall be made on standard forms.
   (2) The applicant shall indicate the source of supply of the wildlife.
   (3) After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.
   (4) A permit holder shall show this written proof to a conservation officer upon request.
   (5) Applicants shall construct holding facilities that meet or exceed the enclosure specifications established in Sections 5 and 6 of this administrative regulation for each listed species to be acquired before submitting the captive wildlife application.
   (6) Applicants shall possess an approved permit before acquiring animals.
   (7) Failure to provide accurate, truthful and complete information on the application form shall result in:
      (a) Immediate withdrawal or revocation of the permit; and
      (b) Confiscation of the wildlife imported under the permit.

Section 5. Confining Facilities. (1) Cages, pens, or other enclosures for confining native wildlife shall be of sufficient structural strength to:
   (a) Prevent the escape of the captive animals;
   (b) Protect the caged animal from injury and predators; and
   (c) Prevent the entrance of free individuals of the same species.
   (2) Wing-clipped and pinioned birds may be kept in suitable unroofed enclosures even though wild birds of the same species may enter the enclosure.
   (3) A person shall not maintain any native wildlife in captivity in an unsanitary or unsafe condition or in a manner that results in the maltreatment or neglect of such wildlife.
   (4) Native wildlife shall not be confined in any cage or enclosure that does not meet the cage specifications in Section 6 of this administrative regulation.
(5) Cages and enclosures in which native wildlife is held in captivity shall be maintained as follows:
(a) Clean drinking water shall be provided daily in clean containers;
(b) Swimming or wading pools shall be cleaned as needed to ensure good water quality;
(c) Enclosures shall provide adequate drainage of surface water;
(d) Captive mammals and birds shall be fed daily;
(e) Food shall be of a type and quantity that meets the nutritional requirements for the particular species and shall be provided in an unspoiled and uncontaminated condition;
(f) Feeding containers shall be kept clean, and uneaten food removed within a reasonable time;
(g) A shelter shall be provided for security and protection from inclement weather;
(h) Shade or an overhead structure shall be provided in warm seasons;
(i) Fecal and food wastes shall be removed from cages daily and stored or disposed of in a manner that prevents noxious odors or insect pests;
(j) Cage and enclosures shall be ventilated to prevent noxious odors;
(k) Hard floors within cages or enclosures shall be cleaned a minimum of once weekly;
(l) Cages or enclosures with dirt floors shall be raked a minimum of once every (3) days and the waste removed;
(m) Animals that are compatible with one (1) another may be held in the same enclosure if the required floor space is provided; and
(n) Common walls shall be constructed between animals that are not compatible so the animals cannot interact.

Section 6. Minimum Enclosure Sizes and Associated Requirements for Stationary Facilities. (1) Birds.
(a) Bobwhite quail older than fourteen (14) weeks shall be held in an enclosure with the following minimum specifications:
   1. A single bobwhite quail enclosure shall be a minimum of 100 square feet,
   2. There shall be an increase in one (1) square foot per additional bobwhite quail.
   3. Bobwhite quail may be held in smaller breeding pens during the breeding season.
(b) Ducks shall be held in an enclosure with the following minimum specifications:
   1. There shall be no more than two (2) pairs or one (1) pair and their offspring confined to an area smaller than 100 square feet;
   2. There shall be at least ten (10) square feet of water that is one (1) foot or greater in depth; and
   3. There shall be at least twenty (20) square feet of additional land space and five (5) square feet of water surface for each additional adult duck.
(c) Geese shall be held in an enclosure with the following minimum specifications:
   1. There shall be no more than two (2) pairs or one (1) pair and their offspring confined to an area smaller than 500 square feet;
   2. There shall be a minimum of fifty (50) square feet of water that is two (2) feet or greater in depth; and
   3. There shall be at least 100 square feet of land and twenty-five (25) square feet of water surface for each additional adult goose.
(d) Ruffed grouse shall be held in an enclosure with the following minimum specifications:
   1. 200 square feet of floor space for five (5) or fewer birds with a height of at least (6) feet; and
   2. There shall be an additional twenty (20) square feet of floor space for each additional bird.
(2) Mammals
(a) Bats shall be kept in an enclosure with the following minimum specifications:
   1. Little brown, long-eared and pipistrelles shall be kept in an enclosure that is at least 6 ft. x 6 ft. x 6 ft.
   2. Evening and red bats shall be kept in an enclosure that is at least 8 ft. x 12 ft. x 6 ft.
   3. Big brown and hoary bats shall be kept in an enclosure that is at least 10 ft. x 20 ft. x 8 ft.
(b) Foxes, bobcats and raccoons shall be held in an enclosure with the following minimum specifications:
   1. A single animal enclosure shall be 8 ft. x 8 ft. x 6 ft. width; and
   2. There shall be thirty (30) square feet floor space for each additional animal.
(c) Coyotes shall be held in an enclosure with the following minimum specifications:
   1. A single animal enclosure shall be 8 ft. x 6 ft. x 6 ft. width; and
   2. There shall be twenty-five (25) square feet floor space for each additional animal.
(d) Beaver and otter shall be held in an enclosure with the following minimum specifications:
   1. A single animal enclosure shall be 8 ft. x 12 ft. x 6 ft. with a 4 ft. x 6 ft. pool that is three (3) feet deep at one (1) end;
   2. There shall be an increase in horizontal cage size and pool size by eight (8) square feet for each additional animal.
   3. Otters shall have a slice and a dry place for sleeping and retreat; and
   4. Beavers shall be supplied with gnawing logs and a dry place for sleeping and retreat.
(e) Muskrat and mink shall be held in an enclosure with the following minimum specifications:
   1. A single animal enclosure shall be 6 ft. x 4 ft. x 3 ft. with a 2 ft. x 4 ft. pool which is two (2) feet deep at one (1) end;
   2. There shall be an increase in horizontal cage size by eight (8) square feet and a pool size of two (2) square feet; and
   3. Muskrats shall have gnawing material.
(f) Grey squirrels and fox squirrels shall be held in an enclosure with the following minimum specifications:
   1. A single animal enclosure shall be 4 ft. x 4 ft. x 8 ft.; and
   2. There shall be an increase in floor space by two (2) square feet for each additional animal.
   3. Skunks, opossum, rabbit and woodchuck shall be held in an enclosure with the following minimum specifications:
   1. A single animal enclosure shall be 6 ft. x 8 ft. x 8 ft.;
   2. There shall be an increase in floor space by four (4) square feet for each additional animal; and
   3. Woodchucks shall have several gnawing logs approximately six (6) inches in diameter.
(h) Weasel shall be held in an enclosure with the following minimum specifications:
   1. A single animal enclosure shall be 3 ft. x 3 ft. x 3 ft.; and
   2. There shall be an increase in floor space by three (3) square feet for each additional animal.

Section 7. Mobile Facilities. Mobile facilities used in transporting native wildlife shall comply with the following requirements:
(1) Facilities shall be equipped to provide fresh air without injurious drafts and adequate protection from the elements;
(2) The animal housing area shall be free of engine exhaust fumes;
(3) Cages shall be large enough to ensure that each animal has sufficient room to stand erect and lay naturally;
(4) The structural strength of the enclosure shall be sufficient to contain the live animals and withstand the normal rigors of transportation; and
(5) Wildlife transported in the same cage area shall be in compatible groups.

Section 8. Temporary Facilities. Native wildlife housed in temporary facilities or exhibits shall be housed in cages that meet the minimum cage specifications as provided in Section 6 of this administrative regulation when wildlife are present in any geographical location for more than ten (10) days.

Section 9. Inspections. (1) The holder of a captive wildlife permit shall allow a conservation officer to inspect the facilities at any reasonable time.
(2) The conservation officer shall immediately notify the permit holder and the commissioner if his inspection reveals that wildlife is
being kept in unsanitary or inhumane conditions.

(3) The captive wildlife permit shall be revoked and all captive wildlife confiscated if the unsatisfactory conditions are not corrected within ten (10) days of the initial inspection.

(4) The captive wildlife permit shall be revoked and all captive wildlife confiscated if an application was not made in good faith or if the permit holder is convicted of any law violation concerning the species for which he holds the permit.

(5) Fees shall not be refunded for permits that are revoked.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "The Commercial and Noncommercial Captive Wildlife Permit Application, 2003 edition";
(b) "The Annual Transportation Permit Application, July 2003 edition"; and
(c) "The Individual Transportation Permit Application, July 2003 edition".

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C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOWARD, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 canceled. 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 by June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:
(a) What the administrative regulation does: Establishes the application procedure for the transportation of captive wildlife; establishes the facility specifications for holding native wildlife; establishes procedures for inspections; and establishes conditions for selling wildlife.
(b) The necessity of the administrative regulation: To establish requirements for the safe operation of commercial wildlife facilities.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.180 authorizes the department to promulgate administrative regulations governing buying and selling wildlife.
(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.180 authorizes the department to promulgate administrative regulations for the commercial sale of wildlife. This administrative regulation will supplement the statute by providing the specific procedures for holding and propagating wildlife for sale.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment establishes limits for possession of snapping turtles and smooth and spiny softshells; bullfrogs; and spring salamanders.
(b) The necessity of the amendment to this administrative regulation: This amendment will allow for the collection of these species for food and/or bait.
(c) How does the amendment conform to the authorizing statutes: See "(c)" above.
(d) How the amendment will assist in the effective administration of the statutes: See "(d)" above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected: There are approximately 150 commercial pet propagation facilities in Kentucky who will have to abide by this administrative regulation. As to the amendment, persons who wish to collect snapping turtles and smooth and spiny softshells and bullfrogs will now be permitted to do so, however, persons have to stay within limits for bullfrogs and spring salamanders.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Few persons shall be impacted by the new language of the amendment. People will simply be permitted to collect species they were previously not allowed to collect.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees the commercial wildlife propagation permit process. Both divisions current budgets will provide for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all persons wishing to collect snapping turtles and smooth and spiny softshells, bullfrogs and spring salamanders.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:010. License agent selection criteria.

RELATES TO: KRS 150.195

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195 authorizes the department to provide for the control of the design, issuance, distribution, and other matters relating to [all] licenses and permits issued by the department. This administrative regulation establishes the application procedures for becoming a POS license agent [and the requirements for inventory agents].

Section 1. Application of Administrative Regulation. This administrative regulation applies to license agents other than those who sell licenses via the Internet and telephone per 301 KAR 5:050.

Section 2. License Agent Applications and Agreements. (1) Before receiving authorization to serve as license agents, businesses or governmental agencies shall:

- 2343 -
(a) Complete and submit a license agent application form;
(b) Enter into a formal contract with the department by agreeing to the provisions of, and signing, the appropriate agent agreement;
(c) Pay a security deposit as required in the agent agreement; and
(d) Sign an electronic fund transfer authorization form which authorizes the department to make electronic fund transfers from a bank account into which the agent shall deposit the proceeds from transactions.

1. Agents with multiple business locations wishing to consolidate payments shall make suitable arrangements with the department.

2. State agencies serving as license agents shall remit payment through the state accounting system.

(2) The department shall [not] appoint as agents:
   (a) Individuals; or
   (b) Businesses that [do not] have:
       (i) A valid federal identification number; and
       (ii) Except for out-of-state agents, a Kentucky sales tax number.

Section 2. [Inventory Agents] (1) County clerks who are license agents may become inventory agents by written request to the department:
   (2) In exchange for an additional fifteen (15) cents for each license sold in the inventory agent's county, an inventory agent shall:
       (a) Maintain a supply of spare POS terminals, ribbons, paper stock, literature and other items as the department may direct;
       (b) Make these items available to license agents during the county clerk's normal business hours;
       (c) Keep accurate records, on forms provided by the department, on inventory items received and delivered;
       (d) Collect and ship defective POS devices to a designated maintenance facility; and
       (e) For licenses and permits sold with an effective beginning date on or after January 1, 2001, the fifteen (15) cent fee to license inventory agent mentioned in paragraph (a) of this subsection will be discontinued and will not be paid.

(3) The department shall not appoint an inventory agent for counties in which the county clerk has chosen not to be an inventory agent.

Section 3. [Out-of-state Agents] The department may grant license agent status to business locations outside Kentucky if the out-of-state agent:
   (1) Was the agent of a county clerk; and
   (2) Posts a surety bond as stipulated in the out-of-state agent agreement.

Section 3. [Incorporation by Reference] (1) The following material is incorporated by reference:
   (a) License Agent Application Form, 1995;
   (b) Electronic Fund Transfer Authorization Form, 1995;
   (c) Agent Agreement, 1995;
   (d) Governmental Agent Agreement, 1995; and
   (e) Out-of-state Agent Agreement, 1995;
   (f) Inventory Agent Agreement, 1995; and
   (g) Inventory Agent Reporting Form, 1995.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 canceled. 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 by June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of:
   (a) What the administrative regulation does: This administrative regulation establishes the application procedures for becoming a POS license agent.
   (b) The necessity of the administrative regulation: This administrative regulation is necessary to update the procedures for license agents. For example, inventory agents are no longer recognized as license issuers, so this provision was deleted from the administrative regulation. Also 2 forms are no longer being used, the inventory agent agreement and the inventory agent reporting form, so they were deleted from the incorporated by reference section.
   (c) How does this administrative regulation conform to the administrative statute: KRS 150.195(1) authorizes the department to promulgate administrative regulations for the design, issuance, distribution and other matters relating to all licenses and permits issued by the department. The promulgation of administrative regulations pertaining to procedures for license agents are necessary for the administration of the department’s licensing system.
   (d) How will this administrative regulation assist in the effective administration of the statutory: This administrative regulation will expand upon the authorizing statute to establish procedures for the administration of the department’s licensing system by specifically establishing procedures for becoming a POS agent.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
       (a) How the amendment will change the existing administrative regulation: The amendment deletes references to inventory agents and deletes the 2 forms pertaining to inventory agents that are no longer being used.
       (b) The necessity of the amendment to this administrative regulation: To update the regulation to make it consistent with the department's licensing system.
       (c) How does the amendment conform to the statutory: The amendment does nothing more than delete the requirements no longer necessary for the administration of the department’s licensing system; adds a definition of "POS"; and makes drafting and formatting changes in conformity with KRS Chapter 13A to the existing administrative regulation.
       (d) How will the amendment assist in the effective administration of the administrative: The amendment will assist in the effective administration of the statute because the deletion of provisions and forms no longer necessary will make the licensing system more efficient which is the mandate of KRS 150.195(1).
   (3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 981 license agents in the state of Kentucky.
   (4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The 981 license agents in Kentucky should be minimally affected, as provisions are being deleted rather than added. There will be no new procedures to follow.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no per se cost associated with the implementation of this administrative regulation. However, the estimated annual cost of running the KDSS system is $826,609.

Initially: There will be no additional cost to the agency to implement this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(8) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The Division of Administrative Services currently oversees the KDSS system and the implementation of the KDSS is absorbed by the division.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all license agents. All license agents perform the same duties and requirements established by the department.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Stipulated)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.195, 150.990
STATUTORY AUTHORITY: KRS 150.195
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(4) authorizes the department to promulgate administrative regulations governing the issuance of licenses. This administrative regulation establishes the requirements for issuing licenses and electronically reporting license sale data and license revenue; details the procedures for suspending or revoking license agent status; and specifies the methods for appealing a suspension or revocation of agent status.

Section 1. Issuing Licenses. (1) A license agent may issue a license to a person who provides [does not provide] the agent with:

(a) His date of birth; and

(b) An identification number, which shall be:
   1. A driver's license number;
   2. A state identification card number;
   3. A Social Security number;
   4. [The number from an identification form printed by the POS device.]

   6. If the purchaser is under age sixty-five (65) and buying a senior/disabled license, the number from an unexpired [a] disability authorization card issued to the person to whom the license is issued and proof of Kentucky residency; or

5. If the purchaser is age sixty-five (65) or over and buying a senior/disabled license, proof of age and Kentucky residency.

(2) A license agent shall not knowingly enter false information while processing a license.

(3) A license agent may issue:

(a) A junior hunting license if [unless] the parent or guardian of the license recipient signs the license at the time of purchase.

(b) A Peabody-Addington Enterprises-Robinson Forest user permit to a person who does not sign the liability waiver required by 301 KAR 4:100 or 301 KAR 4:200;

(c) A senior/disabled license to:
   1. A person age sixty-five (65) or over who does not provide proof of age and Kentucky residency; or
   2. A person under the age of sixty-five (65) who does not show a disability authorization card issued to the person to whom the license is issued and a second item of personal identification.

Section 2. Agent Commission and Depositing of Funds. (1) The license agent shall retain as a commission:

(a) Fifty (50) cents for each Peabody or Addington Enterprises-Robinson Forest permit issued pursuant to 301 KAR 4:100 or 301 KAR 4:200;

(b) Fifty (50) cents for each other transaction.

(2) A license agent shall promptly deposit transaction fees, less the commissions described in subsection (1) of this section, into the bank account required by 301 KAR 5:010.

Section 3. Uploading License Sale Information. (1) The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.

(2) A license agent shall:

(a) Ensure [Connect] his POS device is connected to a telephone line on the date of the scheduled upload;

(b) Leave the POS device connected to the telephone line until the upload has been completed;

(c) Retain the receipts printed with each transaction until notified by the department [after the information about that transaction has been successfully uploaded]; and

(d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.

Section 4. Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent a schedule of dates when an electronic fund transfer from his bank account will be initiated.

(2) On the closing of banking hours on the day of the scheduled electronic fund transfer, a license agent shall have sufficient funds in his account to cover the amount of the transfer.

Section 5. Voiding Licenses. (1) A license agent may void a license if:

(a) The license does not print correctly; or

(b) After the license is printed, the purchaser:
   1. Discovers that he was issued an incorrect license;
   2. Will not pay for the license; or
   3. Otherwise refuses to accept the license.

(2) An agent shall retain a voided license and return them to the department as stipulated in Section 6 of this administrative regulation.

Section 6. Materials Retained and Returned to the Department. (1) A license agent shall retain:

(a) A voided license;

(b) Kentucky Migratory Bird Harvest Information Program Form as referenced in 301 KAR 5:040; and [The completed identification form required by 301 KAR 5:050);

(c) [The signed-waiver of liability form required by 301 KAR 4:100 and 301 KAR 4:200];

(d) Ruined or unusable license stock [and]

(e) Discarded printer ribbons.

(2) A license agent shall return the materials listed in this section to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for a voided license not returned as stipulated in subsection (2) of this section, and shall not issue credit for a voided license returned later than (30) days after the upload in which the void was reported.

Section 7. Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, the department shall suspend for one (1) year a license agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:
   1. The agent agreement;
   2. KRS 150.195; or
3. An administrative regulation adopted pursuant to KRS 150.195.
(2) The department shall permanently revoke the agent status of a license agent who:
(a) Commits for the second time an offense for which he has been previously suspended;
(b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;
(c) Fails to notify the department prior to closing his agent bank account;
(d) Closes his business seasonally without notifying the licensing section supervisor in writing by surface mail, fax or e-mail and filing his account closed;
(e) Knowingly issues a license containing false information; or
(f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock.

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:
(a) Notify the agent by registered mail that his status is under review; and
(b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.
(4) A suspension or revocation shall become effective upon receipt of notification from the department.
(5) A suspended or revoked agent shall:
(a) Surrender upon demand the POS devices and license stock in his possession to an authorized agent of the department;
(b) Allow the department access to financial records dealing with license sales; and
(c) Immediately pay all funds owed to the department.

Section 8. Appeal of Suspension or Revocation of Agent Status. (1) A license agent who wishes to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.
(2) Upon receipt of the request for a hearing, the department shall:
(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and
(b) Schedule a hearing to be held:
1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or
2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.
(3) The hearing officer shall conduct the hearing and his recommendation at the commission meeting immediately following the hearing date.
(4) At the hearing, the license agent:
(a) May be represented by counsel; and
(b) May present evidence which he feels should be considered, including the calling of witnesses.
(5) The department may present evidence and call witnesses to support the suspension or revocation.
(6) The commission shall make its decision by majority vote.
(7) An agent may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.
(8) The department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary

APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.
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CONTACT PERSON: Ellen Benzng, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzng
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes the requirements for issuing licenses and electronically reporting license sale data and license revenue; details the procedures for suspending or revoking license agent status; and specifies the methods for appealing a suspension or revocation of agent status.
(b) The necessity of the administrative regulation: This administrative regulation is necessary to update the procedures for issuing licenses, specifically the information to be provided to receive a license. A new requirement was established for seniors prior to receiving a senior/disability license. Persons now have to show documentation of Kentucky residency.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.195(1) authorizes the department to promulgate administrative regulations for the design, issuance, distribution and other matters relating to licenses and permits issued by the department. This administrative regulation establishes the information that a prospective license recipient shall provide prior to being issued a license.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will establish the requirements necessary prior to issuing a license.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment deletes the requirement of providing the identification number printed by a POS device as a requirement to issuance of a license. Also, the amendment clarifies that documentation of Kentucky residency is necessary for a senior/disability license and liability waivers are no longer required for Peabody and Addington Enterprises. Agents no longer have to send discarded printer ribbons to the department.
(b) The necessity of the amendment to this administrative regulation: To update the department's licensing system.
(c) How does the amendment conform to the authorizing statutes: The amendment specifies the requirements necessary prior to issuing a license such as documentation of Kentucky residency. KRS 150.195(1) authorizes the department to establish procedures for the issuance of licenses.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 150.195(1), because the deletion of provisions no longer necessary and the clarification of documentation of Kentucky residency as a prerequisite to issuing a senior/disability license will make the licensing system more efficient.
(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 758,301 license holders in the state of Kentucky.
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The 758,301
license holders in Kentucky should be minimally affected, as providing proof of Kentucky residency was necessary prior to being issued a disability authorization card, which is prerequisite to issuance of a senior/disabled license. There will be no new procedures to follow.

(5) Provide an estimate of how much it will cost to implement this administrative regulation. There will be no per cent cost associated with the implementation of this administrative regulation. However, the estimated cost of running the KDSS system is $626,609.

Initially: There will be no additional cost to the agency to implement this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The Division of Administrative Services currently oversees the KDSS system and the cost of running and managing the system is absorbed by the division.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all prospective license holders. All prospective license holders are required to show the same information prior to being issued a department license.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 5:030. Purchasing licenses and obtaining replacement licenses.

RELATES TO: KRS 150.090, 150.170, 150.175, 150.195, 150.235, 150.990
STATUTORY AUTHORITY: KRS 150.170, 150.175, 150.195
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(1) authorizes the department to promulgate administrative regulations pertaining to the issuance of licenses. KRS 150.175 authorizes the department to require proof of residency and age or disability for those eligible to purchase a senior/disabled combination license. This administrative regulation specifies the information required to purchase a POS license, the information required on the license, how replacement licenses may be obtained, and how to obtain a disability authorization card.

Section 1. Information Required to Purchase a POS License. A person buying a POS license shall furnish the license agent the following information:

(1) The license applicant's date of birth; and

(2) An identification number, which shall be:

(a) The license applicant's:

1. Driver's license number;

2. State identification card number; or

3. Social Security number; or

(b) If buying a senior/disabled license:

1. If age sixty-five (65) or over, proof of age and Kentucky residency; or

2. If under age sixty-five (65), an unexpired [a] disability authorization card issued by the department and proof of Kentucky residency [another form of personal identification].

Section 2. Providing Information on Licenses. (1) Before performing an act authorized by the license, the license holder shall:

(a) Sign the POS license; and if:

1. The POS license; and

2. Each tag portion of the deer or turkey permit;

(b) Provide the following information, legibly in ink or indelible pencil, in the blanks provided on the POS license:

1. Address, including city, state and zip code;

2. Eye color;

3. Hair color;

4. Sex;

5. Height; and

6. Weight.

(2) A license not completed as specified in this section shall not be valid [be invalid].

(3) A senior/disabled combination license shall not be valid unless accompanied by:

(a) Proof of age and Kentucky residency, if the license recipient is age sixty-five (65) or over; or

(b) An unexpired [A] disability authorization card issued to the license recipient, if the license recipient is under age sixty-five (65) and proof of Kentucky residency.

Section 3. Replacement of Lost or Destroyed Licenses. (1) A person whose license is lost or destroyed may:

(a) Request a replacement license from the department; or

(b) Purchase a replacement license and request a refund from the department.

(2) A person requesting a replacement license or refund shall provide the department with:

(a) His name and complete mailing address;

(b) The identification number used to purchase the original license; and

(c) One (1) of the following:

1. A replacement fee of four (4) dollars; or

2. The license number of the license he bought to replace the lost or destroyed license.

(3) If the department can verify the purchase of the original license, it shall:

(a) Void the original license; and

(b) Issue a:

1. Replacement license; or

2. Refund check for the amount of the license, less a four (4) dollar replacement fee.

(4) A person shall not use, or present to a conservation officer or other peace officer, a license voided by the issuance of a replacement.

(5) The department shall not refund a license replacement fee.

Section 4. Duplicate License Refunds. A person may obtain refunds for a duplicate POS license:

(1) From the license agent who completed the transaction, if:

(a) The request is made on the same day the license was issued; and

(b) The original license is surrendered to the license agent; or

(2) By furnishing the department with:

(a) The duplicate license;

(b) The name and mailing address of the person requesting the refund;

(c) The license number of the original license; and

(d) An explanation of the reason for the refund request.

(3) Upon receipt of the refund request and duplicate license, and subsequent verification of the original purchase, the department shall issue a refund check for the amount of the license less a fee of four (4) dollars.

Section 5. Buying Licenses for Another. A person purchasing a POS license for another person shall provide the license agent with the information about the person for whom the license is being purchased as required in Section 1 of this administrative regulation. A person other than a parent or guardian may not purchase a junior hunting license for another person.

Section 6. Obtaining a Disability Authorization Card. (1) To verify that he qualifies for a senior/disabled combination license because of a disability as specified in KRS 150.175, a person shall provide the department proof of Kentucky residency and one (1) of the following:
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation specifies the information required to purchase a POS license, the moratorium required on the license, how replacement licenses may be obtained, and how to obtain a disability authorization card.
(b) The necessity of the administrative regulation: This administrative regulation is necessary to update the procedures for obtaining licenses and replacement licenses. The administrative regulation clarifies that an unexpired disability authorization card is necessary prior to issuance of a senior/disability license and that proof of Kentucky residency is required prior to issuance of a senior/disability license. The regulation establishes a $4 processing fee for a replacement license.
(c) How does this administrative regulation conform to the authorizing statute: KRS 150.195(1) authorizes the department to promulgate administrative regulations for the design, issuance, distribution and other matters relating to all licenses and permits issued by the department. This administrative regulation establishes the information that a prospective license recipient shall provide prior to being issued a license or duplicate license.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will expand upon the authorizing statute to establish information requirements prior to issuing a license and duplicate license.

If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment clarifies that documentation of Kentucky residency is necessary for a senior/disability license; requires a "TPQY long" form from the local social security office prior to obtaining a senior/disability license; and establishes a $4 processing fee for a replacement license.

(b) The necessity of the amendment to this administrative regulation: To update the department's licensing administration process.

(c) How does the amendment conform to the authorizing statute: The amendment conforms to KRS 150.175(1) by specifying the requirements necessary prior to issuing a license or replacement license, such as documentation of Kentucky residency or the $4 processing fee for a replacement license. KRS 150.195 authorizes the department to establish procedures for the issuance of licenses.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 150.175(1), because the deletion of provisions no longer necessary to issue a license and the clarification of documentation of Kentucky residency as a prerequisite to issuing a license will make the licensing system more efficient.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 758,301 license holders in the state of Kentucky.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The 758,301 license holders in Kentucky should be minimally affected, as providing proof of Kentucky residency was necessary prior to being issued a disability authorization card, which is a prerequisite to issuance of a senior/disability license. There will be no new procedures to follow.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no per se cost associated with the implementation of this administrative regulation. However, the annual cost of running the KDSS system is $526,609.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The Division of...
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Administrative Services currently oversees the KDSS system and the implementation of KDSS is absorbed by the division.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all prospective license holders. All prospective license holders are required to show the same information prior to being issued a department license.

COMMERCE CABINET
Department of Fish and Wildlife Resources

(Amendment)

301 KAR 5:050. Purchasing licenses electronically.

RELATES TO: KRS 150.195, 150.225, 150.235
STATUTORY AUTHORITY: KRS 150.025(1), 150.195(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 150.195 requires the department to provide for the issuance of all licenses and permits. This administrative regulation establishes the procedures for purchasing licenses over the internet or the telephone.

Section 1. A person may remotely purchase a license or permit from the department by:

(1) Connecting through the internet or by telephone; and

(2) Providing the following information at the time the license is purchased:
(a) Full name;
(b) Complete mailing address;
(c) Date of birth;
(d) Driver’s license or Social Security number;
(e) Telephone number or e-mail address;
(f) A valid Visa or Mastercard number and expiration date;

(g) If the purchaser is under age sixty-five (65) and wishes to purchase a senior/disabled license, he shall provide the number from the licensee’s unexpired disability authorization card; and
(h) If a waterfowl permit was purchased, the Kentucky Migratory Bird Harvest Information Program information as required by 301 KAR 5:040.

(2) Paying a processing fee as agreed upon in a contract with the department, or equal to six (6) percent of the total cost of the licenses purchased.

Section 2. (1) The department shall not complete a transaction not approved by the credit card company.

(2) Upon completion of the license transaction, the department shall issue an authorization number to the license purchaser.

(3) The authorization number shall serve in lieu of the paper license. A person, while performing an act authorized by the license, shall carry upon his person and present upon request to a law enforcement officer:
(a) The authorization number; and
(b) Identification that has a picture and date of birth; and
(c) If the purchaser is under age sixty-five (65) and purchases a senior/disabled license, an unexpired disability authorization card issued to the license recipient and proof of Kentucky residency.

(4) A person using an authorization number in lieu of a deer or turkey permit shall:
(a) Before hunting, write his name, address and applicable authorization number on a card [cards corresponding to the number of birds or turkey included];
(b) after the deer or turkey is taken, show the card upon request; and
(c) Complete any check-in procedure required for that species.

write the telecheck authorization number on the card; and

(d) If the carcass is out of the hunter’s possession, the hunter shall attach another card to the carcass containing the hunter’s name, address, authorization number, date the animal was taken, species, and telecheck authorization number, if already obtained.

[Attach the card to the carcass while it is being transported by vehicle or is out of the hunter’s possession; and
(d) Complete any check-in procedure required for that species.]

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary

APPROVED BY AGENCY December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 canceled. 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 by June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601; phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing
(1) Provide a brief summary of:
(a) What the administrative regulation does:
(b) The necessity of the administrative regulation:
(c) How does this administrative regulation conform to the enabling statute: KRS 150.195(1) authorizes the department to promulgate administrative regulations for the design, issuance, distribution and other matters relating to all licenses and permits issued by the department. This administrative regulation establishes the procedures for purchasing licenses via the Internet and telephone.
(d) How will this administrative regulation assist in the effective implementation of the statutes: This administrative regulation will provide further opportunities for purchasing licenses. KRS 150.190(1) authorizes the department to establish regulations for the distribution of all licenses. By expanding the avenues of license purchase to the Internet and telephone, the department is implementing the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment requires that persons under age 65 who wish to purchase a senior/disabled license shall provide the number from the licensees unexpired disability authorization card; requires that applicable persons shall carry with them an unexpired disability authorization card and proof of Kentucky residency to show upon request; and requires updated checking requirements after an animal is harvested.
(b) The necessity of the amendment to this administrative regulation: To update the department’s licensing administration process.
How does the amendment conform to the authorizing statutes: The amendment further establishes the licensing requirements for purchasing licenses electronically. KRS 150.195(1) authorizes the department to establish procedures for the issuance of licenses.

(c) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by requiring the requirements for purchasing a license electronically consistent with purchasing a license at a store location.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 758,301 license holders in the state of Kentucky.

(4) Provide an assessment of how the groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: The 758,301 license holders in Kentucky should be minimally affected. Providing proof of Kentucky residency was necessary prior to issuance of a disability authorization card, which is prerequisite to issuance of a senior/disabled license. There will be no new procedures to follow when purchasing a license via the Internet or telephone that are different than purchasing from a store location.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no per se cost associated with the implementation of this administrative regulation. However, the estimated annual cost of running the KDDS system is $528,609.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation. The Division of Administrative Services currently oversees the KDDS system and the implementation of KDDS is absorbed by the division.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation applies to all prospective license holders. All prospective license holders may purchase licenses via the Internet and telephone, the same requirements for purchase apply to all persons.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 49:011. General provisions relating to area solid waste management plans.

RELATES TO: KRS 109.041, 224.10-105, 224.43-310(5), 224.43-340(2), (6), (9), 224.43-345, 224.43-505 [224.01, 224.43] STATUTORY AUTHORITY: KRS 224.43-340, 224.43-345 NECESSITY, FUNCTION, AND CONFORMITY: The purpose of the area solid waste management plan is to develop goals and objectives for improving solid waste management in all areas of Kentucky. By addressing all solid waste management components, including collection, transportation, disposal, recycling, resource recovery, and public education, counties can create a management structure capable of supporting the local solid waste system. This administrative regulation sets forth general requirements and procedures for submittal, processing, and amending of area solid waste management plans. This administrative regulation incorporates by reference documents for preparing five (5) year updates of area solid waste management plans and annual reports (is being promulgated as a result of the enactment of statutory changes made during the First Extraordinary Legislative Session of 1994). This administrative regulation supersedes three (3) administrative regulations that are being repealed due to conflicts with the 1991 statutory revisions: 401 KAR 49:010, 49:080, and 49:070.

Section 1. Preparation of an Area Solid Waste Management Plan. (1) An area solid waste management plan, referred to in this administrative regulation as the plan, shall contain the information specified in KRS 224.43-345.

(2) The plan shall be prepared and formatted in accordance with (guidelines provided by the cabinet).

(2) The requirements set forth in the document[s] entitled "Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update", DEP Form 6062 (February 2004), incorporated by reference in Section 8 of this administrative regulation, ["Guidelines for Preparation of an Area Solid Waste Management Plan", (June 1996), are incorporated in this administrative regulation by reference. The guidelines may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday.]

Section 2. Public Information Procedures. (1) The governing body of an area solid waste management area shall be responsible for conducting a public information period on the contents of the plan or an amendment to the plan pursuant to Section 4.4 of this administrative regulation, prior to its submittal to the cabinet.

(2) The public information period shall include a thirty (30) day comment period that shall commence with the publishing of a public notice in accordance with subsection (3) of this section.

(3) A public notice shall be published by the governing body that meets the following requirements:

(a) [The public notice form provided by the cabinet shall be completed by the governing body. The public notice form is part of the guidelines incorporated by reference in Section 1(2) of this administrative regulation;]

(b) The public notice shall be of a size to include not less than two (2) column widths and shall be in a display format; and

(b) [6(4)] The public notice shall be published in a daily or weekly newspaper of general circulation in each county in the area designated by the plan.

(4) The governing body shall hold a public hearing if, during the public comment period, one is requested. The hearing shall be held within fifteen (15) days of the close of the public comment period, with at least seven (7) days public notice. The hearing may occur in conjunction with the governing body's normally scheduled official meeting. The governing body shall provide at least seven (7) days notice for the scheduling of a public hearing on the plan in accordance with subsection (3)(b) and (c) of this section. [and] the

(5) The governing body shall respond in writing to written public comments within fifteen (15) days after the close of the public comment period. The governing body shall publish a notice in a daily or weekly newspaper of general circulation in each county in the area designated by the plan that the written response to public comments is available to the public. The notice shall state where copies of the response are maintained and how it may be obtained. The governing body shall also mail the response to all comments to each individual who commented on the plan during the public comment period.

Section 3. Submittal and Plan Review Process. (1) All plans shall be submitted no later than the deadlines specified in KRS 224.43-340 and 224.43-345 and shall be accompanied by an ordinance, resolution, or administrative regulation approving the plan from the appropriate governing body of the solid waste management area [approving].

(2) The original and one (1) copy of the plan shall be sent to the supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

(3) The cabinet shall review each submitted plan for consistency with KRS 224.43-340, KRS 224.43-345, and this administrative regulation.

(4) The cabinet shall notify the governing body in writing if the plan is approved.

(5) If the cabinet disapproves a plan [is disapproved by the - 2350 -
cabinet), the cabinet shall notify the governing body in writing of each deficiency. The governing body shall have thirty (30) calendar days from the date of the notice to correct the deficiencies and submit a corrected plan. The time elapsed during the governing bodies' correction of deficiencies shall not count toward the cabinet's 120-day review deadline specified in KRS 224.43-340(6). The cabinet shall disapprove a plan after issuance of three (3) notices of deficiency, [cabinet may grant the governing body up to ninety (90)-days to correct all deficiencies in the plan.] The cabinet may require the governing body to repeat the public information process described in [accordance-with] Section 2 of this administrative regulation for any plans significantly modified during the review process (prior to cabinet approval of the plan).

(6) If the governing body fails to submit a plan, fails to correct all identified deficiencies within time frames specified by the cabinet, or fails to amend a plan in accordance with Section 4 of this administrative regulation, the cabinet may take one (1) or more of the following actions:

(a) Initiate enforcement proceedings against the governing body pursuant to KAR Chapter 401 KAR Chapter 40; and

(b) Withhold any grants or monies for the area and the counties and cities located within the area pursuant to KRS 224.10-105 and KRS 224.43-340 until the governing body is in compliance with its plan, including grants and reimbursements awarded under KRS 224.43-505 [a plan is approved by the cabinet]; and

(c) Prepare a plan for the governing body, conduct the public information procedure specified in Section 2 of this administrative regulation, and charge the governing body all expenses incurred by the cabinet.

Section 4. Plan Amendment Process. (1) A plan may be amended upon either the initiative of the governing body of the solid waste management area or the cabinet if the current plan is inadequate because of new or revised information or to meet the requirements of KRS Chapter 224 and this administrative regulation.

(2) If the cabinet makes a determination that an amendment to a plan is necessary under subsection (1) of this section, the cabinet shall inform the governing body in writing of the needed changes. The governing body shall have ninety (90) days to prepare and submit an amendment in accordance with subsection (5) of this section.

(3)(a) If the governing body makes a determination to amend its plan, it shall prepare and submit to the cabinet a request to amend that contains the following:

1. Name of the county or area that intends to amend its plan;
2. Name and address of the governing body;
3. Name, address, and telephone number of contact person;
4. Identification of the pages of the plan to be affected and a brief statement of the nature of the amendment; and
5. A written description outlining the justification, desired outcome, implementation schedules, and the financial impact of the proposed amendment.

(b) The cabinet shall review the request to amend within thirty (30) calendar days of receipt and determine whether a plan amendment is necessary. If the plan amendment is not necessary, the cabinet shall inform the governing body that no amendment is required. If a plan amendment is necessary, the cabinet shall notify the governing body to proceed with amending [to amend] its plan in accordance with subsections (4) and (5) of this section.

(4) The governing body shall publish a public notice regarding the proposed amendment to its plan in accordance with Section 2(3) of this administrative regulation unless the cabinet informs the governing body in writing that a public notice is not necessary. If a proposed amendment is to correct a clerical error, the cabinet shall not require the governing body to publish a public notice.

(5) Upon approval by the governing body of the proposed plan amendment, the governing body shall submit the following to the cabinet:

(a) Two (2) copies of each page of the plan that is being amended;
(b) A copy of the public notice, as published, from each newspaper that published the notice verifying the date of publication;
(c) A copy of the ordinance, resolution, or administrative regulation of the governing body approving the amendment and its submission to the cabinet;
(d) Copies of any ordinances, resolutions, or administrative regulations approving the amendment by the first or second class city governing body that developed its portion of the plan, if required;
(e) Copies of any agreements or contracts relating to the plan amendment, if applicable;
(f) Copies of any proposed ordinances, resolutions, administrative regulations, or by-laws relating to the plan amendment, if applicable; and
(g) Any other supporting documentation as required by the cabinet.

(5) The cabinet shall inform the governing body in writing of the cabinet's decision to approve or disapprove the amendment to the plan.

Section 5. Plan Update Process. (1) The governing body shall submit to the cabinet for reappraisal an updated plan on or before October 1, 2007 [January 4, 1998], and every five (5) years thereafter.

(2) The plan update shall be subject to the public information procedures of Section 2 of this administrative regulation.

(3) The cabinet shall review the plan update in accordance with Section 3 of this administrative regulation.

Section 6. Implementation of the Plan. (1) Each governing body shall implement its plan as approved by the cabinet.

(2) If a governing body fails [failure] to implement an approved plan, [shall result in one (1) or both of the following actions by the cabinet:

(a) Shall not endorse projects that generate solid waste under the Kentucky intergovernmental review process for the area and the counties and cities located in the area pursuant to KRS 224.43-340 until the governing body is in compliance with its plan [initiate enforcement proceedings against the governing body pursuant to KRS 224.49-010 and 224.49-020]; and

(b) May withhold any grants, loans or other monies for the area and the counties and cities located in the area pursuant to KRS 224.10-105, including grants and reimbursements awarded under KRS 224.43-505, and KRS 224.43-340] until the governing body is in compliance with its plan; and

(c) May initiate enforcement proceedings against the governing body pursuant to KRS 224.49-010 and 224.49-020.

Section 7. Annual Reports. (1) The annual report, specified in KRS 224.43-310(5), shall be prepared by the governing body of each solid waste management area (as a form-provided by the cabinet). The original and one (1) copy of the report shall be sent to the supervisor, Local Assistance Section, Resource Conservation and Local Assistance Branch [director], Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601.

(2) The annual report shall be prepared and formatted using the "Solid Waste Management Area Annual Report Form", DEP Form 6881 (February 2004). Incorporated by reference in Section 6 of this administrative regulation.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Guidance for Preparing an Area Solid Waste Management Plan 5-Year Update (February 2004)", and

(b) "Solid Waste Management Area Annual Report Form (February 2004)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716. [requisitions of the annual report, form DEP-1016 entitled "Area Solid Waste Management Plans Annual Report" (August-1992) are incorporated in this administrative regulation by reference. The annual report may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716, between the hours of 3 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, 8 a.m. to 4:30 p.m.,]
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nini Hughes

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth specific requirements and procedures for submittal, processing, and amending of area solid waste management plans and annual reports.
(b) The necessity of this administrative regulation: This administrative regulation fulfills the requirements of KRS 224.43-310, 224.43-340 and 224.43-345.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation provides procedures to the solid waste management areas on updating solid waste management plans and submitting annual reports, required by KRS 224.43-310, 224.43-340 and 224.43-345.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by providing the procedures for the preparation, submittal, processing and amending of area solid waste management plan updates. This administrative regulation also provides the annual report requirements to solid waste management areas.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment changes the requirements for submittal of the annual report and the 5 year plan updates required by KRS 224.43-310, 224.43-340 and 224.43-345.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be consistent with KRS 224.43-310, 224.43-340 and 224.43-345.
(c) How the amendment conforms to the context of the authorizing statutes: This amendment provides the revised procedures for the area solid waste management plan updates and annual reports as required in KRS 224.43-310, 224.43-340 and 224.43-345.
(d) How the amendment will assist in the effective administration of the statutes: This amendment provides the information necessary to comply with KRS 224.43-310, 224.43-340 and 224.43-345.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 120 counties responsible for solid waste management areas will be affected by this administrative regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: Each county will be responsible for reporting information on solid waste management to the cabinet. This amendment updates the information that is required in these reports to include information on illegal dumps, litter abatement activities and the accounting of funds received from the cabinet.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No implementation cost.
(b) On a continuing basis: No implementation cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The General Fund will continue to be the source of funding for the implementation and enforcement of this regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding is necessary to implement this amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to all solid waste management areas.

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
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation affects the governing bodies, counties and cities, responsible for solid waste management.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This regulation relates to the solid waste management area governing body, responsible for the area solid waste management plan updates and annual reports, required by KRS 224.43-310, 224.43-340 and 224.43-345.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): No change.
Expenditures (+/-): No change.
Other Explanation: No change.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:140. Peace officer professional standards.

RELATES TO: KRS 15.330(1)(h), 15.380, 15.382
STATUTORY AUTHORITY: KRS 15.330(1)(h)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(h) authorizes the Kentucky Law Enforcement Council to promulgate reasonable administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer certification.

Section 1. Approval of Agency's Validated Job Task Analysis and Associated Agency Testing. (1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to POPS completed KLEC POPS Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply:
(a) The name of the entity who completed the analysis;
(b) The date on which the analysis was completed;
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(c) A curricula vitae, resume, or company profile of the entity that completed the analysis; and
(d) A listing of all job task analyses previously completed by the person or entity, including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.
   1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.
   2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.
   3. Number and validity of job task analyses completed.

(b) Methodological approach.
   1. Reasonable, standardized format of the study and the report.
   2. Relative reliability and validity of the study’s sampling techniques and practice.
   3. Other considerations that reflect sound practice of the scientific method.
4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements, and description of duties of officers.

(3) Initial review.

(a) Within five (5) business days of receipt of the application, POPS shall mail a notification to the agency that either:
   1. The application has been received and is complete; or
   2. The application is incomplete and the specific information which shall be supplemented in order to process the application. POPS shall receive the necessary information within ten (10) business days of the agency’s receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned, and the agency shall resubmit an application for consideration of their job task analysis and associated agency testing.

(b) POPS Recommendation. Within thirty (30) days of their receipt of the completed application, POPS shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.

(c) KLEC Review. The KLEC Committee on Certification shall review the application and POPS’ recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or found to be insufficient or erroneous.

(d) If an application is found to be insufficient or erroneous, the KLEC shall notify the agency of:
   1. The reasons for the finding; and
   2. The requirement that the council file a declaratory action in accordance with KRS 15.394(1).

Section 2. Agency Testing Procedures. (1) POPS shall receive completed KLEC POPS Form Q from each agency participating in certification as of December 1, 1998, prior to any applicant testing. If an agency initiates participation in certification after December 1, 1998, KLEC POPS Form Q shall be submitted to POPS with KLEC POPS Form E.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC POPS Form Q, POPS shall mail a notification to the agency that either:

(a) The form has been received and is complete; or
(b) The form is incomplete and the specific information which shall be supplemented in order to process the form. POPS shall receive the necessary information within ten (10) business days of the agency’s receipt of the notice of insufficiency. No applicants shall be tested or certified by KLEC until the form is complete.

(3) POPS review of requests for agency testing. Within thirty (30) days of receipt of the completed form, POPS shall review requests for agency testing from those agencies with a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. POPS shall mail a notice to the agency if the proposed testing is acceptable. If POPS determines that the minimum standards are not met, POPS shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC Review. The KLEC Committee on Certification shall review the form and POPS’ recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the form KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

(5)(a) An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal:
   1. With the Secretary of the Justice and Public Safety Cabinet; and
   2. Within thirty (30) days of receipt of the notice of rejection.
(b) The notice of appeal shall be submitted:
   1. On KLEC POPS Form S; and
   2. With a copy of the notice of rejection of agency testing attached.
(c) A copy of the notice of appeal shall be mailed to POPS by certified mail.
(d) The Secretary of the Justice and Public Safety Cabinet shall schedule a hearing within thirty (30) days of receipt of the notice of appeal.
(e) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 3. Certification of Exempt Officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC POPS Form E to POPS.

(2) State peace officers employed pursuant to KRS 18A who have had certification requirements adopted pursuant to KRS 15.380(2) shall submit KLEC POPS Form E to POPS.

(3) An agency may request that agency officers identified in KRS 15.380(4) participate in certification by submitting KLEC POPS Form E to POPS.

(4) Officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1) shall submit KLEC POPS Form C.

Section 4. Suitability Minimum Requirements: The following minimum requirements and procedures are established for KLEC testing:

(1) The background investigation as specified in KRS 15.382(12) shall consist of the following minimum requirements:

(a) Biographical history;
(b) Family history;
(c) Education;
(d) Employment history;
(e) Interview with the applicant’s references;
(f) Criminal history including domestic violence protective orders; and
(g) Credit history.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5) through the following procedure: The agency shall submit two (2) completed FD 250 FBI Fingerprint Cards and all required fees to the Kentucky State Police, who shall complete a state records check, then forward the card to the FBI. The FBI shall forward the results of its records check to the employing agency. Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI. The agency may employ the peace officer contingent upon the pending FBI results.

(3) Psychological screening as specified in KRS 15.382(15) shall consist of the following minimum requirements:

(a) Screening shall measure a broad spectrum of abilities, personality characteristics, and related constructs, including integrity, conscientiousness, and vocational preference, which are relevant to job related duties;
(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for
(c) Assessment results and predictions shall include a recommendation and summary statement regarding the applicant’s overall suitability for employment as a peace officer. The summary statement shall classify applicants as “suitable”, “not suitable”, or “borderline. In the case of borderline and not suitable, the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency; and
(d) Screening shall be administered in accordance with the “Standards for Educational and Psychological Testing”, Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association.

(4) Physical agility testing as specified in KRS 15.382(16) shall consist of the following minimum requirements:
(a) The applicant shall successfully complete each of the following events as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the Validation of Physical Fitness Standards for the Kentucky Department of Criminal Justice Training. Appendix I - Procedures for Physical Fitness Testing Procedures for Mandate Physical Fitness Tests, September 25, 1998, Fitness Intervention Technologies:
   1. One and five-tenths (1.5) mile run in seventeen (17) minutes, twelve (12) seconds;
   2. 300 meter run in sixty-five (65) seconds;
   3. Twenty (20) push ups;
   4. One (1) bench press equal to sixty-four (64) percent of the applicant’s body weight; and
   5. Eighteen (18) sit ups in one (1) minute.
(b) If an applicant passes all events when participating in the physical agility test in its entirety, he shall have met the physical agility minimum requirements.
(c) If an applicant passes at least one (1) event when participating in the physical agility test in its entirety:
   1. May retest in the failed events no sooner than forty-eight (48) hours and no later than sixty (60) days from the date of the initial test.
   2. All failed events shall be retested on the same date.
   3. If the applicant passes all previously failed events on the date of the retest, he shall have met the physical agility minimum requirements.
   4. If the applicant does not pass all previously failed events on the date of the retest, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests. The applicant may repeat the physical agility test no sooner than forty-eight (48) hours from the date of the retest.
(d) If an applicant fails all events when participating in the physical agility test in its entirety, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests.
(e) An applicant may participate in the physical agility test in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.
(f) An applicant may participate in one (1) physical agility retest for each physical agility test taken in its entirety.
(5) Medical screening as specified in KRS 15.382(10) shall consist of the following minimum requirements: The applicant shall complete KLEC POPS Form G-2, Medical History Statement, which along with KLEC POPS Form G-3, Medical Guidelines Implementation Manual, shall be provided to the physician, duly licensed to practice in the commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines. The physician shall complete KLEC POPS Form G-1, Medical Examination Report and forward it to the employing agency.
(6) Drug screening as specified in KRS 15.382(11) shall consist of the following minimum requirements: The applicant shall execute KLEC POPS Form K-1 and submit a urine sample that shall be screened for marihuana, amphetamines, cocaine, opiates, phencyclidine, barbiturates, benzodiazepines, propoxyphene, methadone, and methaqualone. The integrity of the urine sample shall be documented on KLEC POPS Form K-2, Drug Screening Chain of Custody. The testing shall be done in compliance with Federal DOT Work Place Standards, 49 C.F.R. §40, subparts A and B.
(7) Polygraph examination as specified in KRS 15.382(17) shall consist of the following minimum requirements: The applicant shall complete KLEC POPS Form I-1, Polygraph Waiver, and KLEC POPS Form I-2, Polygraph Applicant Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the commonwealth of Kentucky, who shall perform a polygraph examination of the applicant consisting of the questions as listed in KLEC POPS Form I-3, Polygraph Test Questions.

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including KLEC POPS Forms I-1 - Consent for Preemployment Polygraph Examination, K-1 - Drug Screening Applicant Consent Form, T-1 - Medical Release - Phase I Testing, and T-2 - Health Confirmation - Phase I Testing.
(2) Testing schedule. POPS shall mail to all law enforcement agencies in the commonwealth a list of sites and dates for KLEC administered testing. Testing sites shall be statewide and accommodations shall be made where reasonable to insure testing sites are accessible based upon need. Advance notice of the schedule shall be made public at least three (3) months prior to the testing. KLEC shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available if possible at the Richmond POPS office as needed.
(3) Registration for KLEC administered testing. POPS shall receive KLEC POPS Forms A from the employing agency at least five (5) business days prior to testing.
   (a) Applicants shall provide current photographic identification at the time of testing.
   (b) Applicants shall bring a completed copy of KLEC POPS Form H-2 at time of psychological testing.
   (c) POPS shall receive the completed polygraph questionnaire KLEC POPS Form I-2 at the time of testing.

Section 6. Test Reporting by KLEC. (1) Results of drug and psychological screening provided through KLEC shall be forwarded directly to the employing agency head by the entity administering the test. All other tests provided by or through KLEC will be forwarded to the employing agency head by POPS.
(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC POPS Form D. The information from the completed form shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.
(3) Length of test result validity.
   (a) Physical agility: results shall be considered current and valid for one (1) year from the passing date of the test.
   (b) Psychological screening: results shall be considered current and valid for one (1) year from the date of the screening. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new psychological screening for the applicant.
   (c) Polygraph examination: results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the one (1) year period, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.
   (d) Drug screening: results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall be required to submit to another drug screening.
(4) Updating test results. It shall be the responsibility of the employing agency to update test results if necessary by submitting KLEC POPS Form D to POPS.
(5) Agency access to prior test results. It shall be at the applicant and individual agency’s discretion to allow another employing agency access and use of the initial agency’s certification testing which is still current and valid. If agencies enter into such an agreement with the written permission of the applicant, the new employing agency shall receive the medical, psychological, and polygraph results directly from the entity administering the exami-
nation. Costs incurred for duplicate KLEC test results shall be the responsibility of the agency obtaining the results.

Section 7. Test Reporting by Agency. (1) An agency that performs physical agility testing based upon the requirements in Section 4(4)(a) of this administrative regulation shall report all test results by submitting a POPS Form PT 1, Physical Agility Test Session Report to the KLEC within ten (10) days of administering the test.

(2) An agency that performs physical agility testing based upon its own validated job task analysis in accordance with KRS 15.382(16), shall report the test results of every applicant tested in writing to the KLEC within ten (10) days of administering the test.

(3) Physical agility test results shall be reported to the KLEC regardless of whether the applicant:
   (a) Passes or fails the test; or
   (b) Performs or completes every component of the physical agility test.

Section 8. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:
   (a) Sixty-five (65) dollars for each psychological screening;
   (b) $100 for each polygraph examination; and
   (c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.
   (a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to POPS the actual approved budget of the governmental unit for the current and the preceding year, the number of certification applicants for the current and preceding year, the actual revenue receipts of the governmental unit for the current and the preceding year, and a detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that inadequate funding was not budgeted to cover the cost of testing.
   (b) Initial review. Within five (5) business days of receipt of the application POPS shall mail a notification to the agency that either:
      1. The application has been received and is complete; or
      2. The application is incomplete and the specific information which shall be supplemented in order to process the application. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency.
      If the agency fails to submit the supplemental information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.
   (c) Recommendation. Within thirty (30) days of receipt of the completed application, POPS shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.
   (d) KLEC review. The KLEC Committee on Certification shall review the application and POPS' recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.
   (e) Appeal. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice and Public Safety Cabinet. The notice shall be filed within thirty (30) days of receipt of the notice of rejection. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached. A copy of the notice of appeal shall be delivered to POPBS by certified mail. The Secretary of the Justice and Public Safety Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) POPS shall immediately notify DOCJT.

Section 9. Employment Changes. (1) Pursuant to KRS 15.392, when a certified peace officer leaves an agency, the agency shall submit KLEC POPS Form F. If the officer is reemployed by another agency as a peace officer the employing agency shall submit KLEC POPS Form F within five (5) business days of the employment or appointment. Information from completed KLEC POPS Forms F shall be provided to DOCJT for Kentucky Law Enforcement Foundation Program Fund and training authorization purposes.

(2) A peace officer who retires pursuant to KRS 61.637, is reemployed as a peace officer with the same agency no later than twelve (12) months from the initial retirement date, shall be considered to have remained in continuous employment of that agency. The peace officer shall have 180 days from the date of reemployment to correct any in-service training deficiency resulting from the retirement period.

Section 10. Records. (1) Records retention. KLEC shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives, pursuant to 725 KAR 1:030. KLEC shall devise and maintain a database management system that organizes records adequately to the tasks of associated with certification.

(2) Security. KLEC and employing agencies shall maintain records in a manner to insure their security. In order to properly maintain the confidentiality of certification records as required by KRS 15.400(3), a law enforcement agency shall keep all records relating to an officer's certification in a file separate from any personnel file maintained by the hiring authority.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, regardless of where the certified peace officer is employed in the commonwealth.

(4) An agency that knowingly discloses confidential information in violation of KRS 15.400(3) may be denied participation in KLEC polygraph and psychological examinations.

Section 11. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and shall be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.
   (a) An applicant shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.
   (b) If an applicant has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in physical agility testing if he is under the influence thereof to the extent that the applicant may be impaired or may endanger himself or other persons or property. An applicant shall advise the KLEC test administrator in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician.
   (3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC POPS Form R shall be mailed to the applicant, and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 12. Compliance. (1) Inspection. Test results, testing
procedures, and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency’s certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to assure compliance with certification requirements.

(4) If, during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in KLEPPF. If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEPPF.

Section 13. Issuance of Certification. All identification cards issued to a peace officer verifying certification remain the property of KLEC and shall be returned to POPS upon the peace officer’s loss of certification.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:


(b) Federal DOT Work Place Standards, 49 C.F.R. 40, subparts A and B;

(c) KLEC POPS Form A - Attesting to Minimum Standards/Testing Registration, revised 9/13/00;

(d) KLEC POPS Form B - Basic Training Completed (non-DOCT), revised 1/19/99;

(e) KLEC POPS Form C - Grandfather Information, revised 1/19/99;

(f) KLEC POPS Form D - All Standards Met, revised 9/13/00;

(g) KLEC POPS Form E - Request for Certification for Exempt Officers, revised 1/19/99;

(h) KLEC POPS Form F - Status Update/Recertification, revised 9/13/00;

(i) KLEC POPS Form G-1 - Medical Examination Report, revised 1/19/99;

(j) KLEC POPS Form G-2 - Medical History Statement, revised 1/19/99;

(k) KLEC POPS Form G-3 - Medical Guidelines Implementation Manual, revised 1/19/99;

(l) KLEC POPS Form H-1 - Background Investigation, revised 1/19/99;

(m) KLEC POPS Form H-2 - Personal History Statement, revised 1/19/99;

(n) KLEC POPS Form I-1 - Consent for Preemployment Polygraph Examination, revised 1/19/99;

(o) KLEC POPS Form I-2 - Polygraph Applicant Questionnaire, revised 1/19/99;

(p) KLEC POPS Form I-3 - Polygraph Test Questions, revised 1/19/99;

(q) KLEC POPS Form J - JTA Submission, revised 1/19/99;

(r) KLEC POPS Form K-1 - Drug Screening Applicant Consent Form, revised 1/19/99;

(s) KLEC POPS Form K-2 - Drug Screening Chain of Custody, revised 1/19/99;

(t) KLEC POPS Form L-1 - Code of Ethics, revised 1/19/99;

(u) KLEC POPS Form L-2 - Canon of Ethics, revised 1/19/99;

(v) KLEC POPS Form Q - Agency Submission Form, revised 1/19/99;

(w) KLEC POPS Form R - Removal from Testing, revised 1/19/99;

(x) KLEC POPS Form S - Notice of Appeal, revised 1/19/99;

(y) KLEC POPS Form T-1 - Medical Release - Phase I Testing, revised 1/19/99; and

(z) KLEC POPS Form T-2 - Health Confirmation - Phase I Testing, revised 1/19/99;

(aa) POPS Form PT-1 - Physical Agility Test Session Report, (1/03 edition).

(bb) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Law Enforcement Council, Office of Peace Officer Professional Standards, 415 Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3122, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM F. WALSH, Ph.D., Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in Room 211, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2004, five workdays 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137, phone (859) 622-3073, fax (859) 622-3162.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the guidelines and procedures necessary to implement and administer peace officer certification.

(b) The necessity of this administrative regulation: The regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to approve law enforcement officers as having met training requirements, administer the Kentucky Law Enforcement Foundation Program Fund (KLEPPF), and certify peace officers pursuant to KRS 15.380 through 15.404.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.330(10)(b) authorizes the Kentucky Law Enforcement Council to promulgate reasonable rules and administrative regulations to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation is required to establish certification procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable, and consistent rules and procedures for peace officer certification.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: KRS 15.382 establishes the minimum qualifications which a person must meet in order to become a certified peace officer. In particular, this statute requires a background investigation, medical examination, psychological examination, and polygraph examination. KRS 15.40(3) establishes that this information shall not be subject to disclosure, notwithstanding the Open Records Act. This amendment is intended to provide clear guidance to agencies that this information should not be placed in an officer’s personnel file, with other materials that may be open to inspection by the officer and other city/county/state officials.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly establish that this information should be kept separate from other documents in a
personnel file. In audits conducted by DOCJT's compliance section, it has been discovered that numerous cities and counties have policies that require all employee documentation, regardless of job duty, to be placed in the employee's personnel file, which can be inspected by the employee. The intent of KRS 15.400(3) was to keep documents relating to a peace officers' certification confidential.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.400(3) provides that, notwithstanding the Open Records Act, an officer's home address, telephone number, date of birth, social security number, background investigation, medical examination, psychological examination, and polygraph examination shall not be subject to disclosure.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will put agencies on clear notice that they must keep the records listed in KRS 15.400(3) separate from other personnel records.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All law enforcement agencies in the commonwealth that fall within the provisions of KRS 15.300(1).

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: No new records are required, so no significant impact is anticipated. The only impact that will be experienced is the fact that these records must be kept separate from other personnel records.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No additional state costs.
   (b) On a continuing basis: No additional state costs.
   (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFP).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase fees.

(9) TIERING: Is tiering applied? No, tiering was not applied.

Tiering was inappropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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

2. State what unit, part, or division of local government this administrative regulation will affect. Local law enforcement agencies that place confidential peace officer certification records into city or county personnel files.

3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This administrative regulation relates to the retention of peace officer certification records by local agencies. KRS 15.382 establishes minimum qualifications for certification as a peace officer, which entails the creation of records that are not to be disclosed under KRS 15.400(3).

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 in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation: Effect on revenue is unlikely. The only expenditure that an agency should experience is the cost of keeping regular personnel records and peace officer certification records in separate files. The majority of local agencies already do this.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(Amendment)

503 KAR 1:160. Department of Criminal Justice Training - Kentucky Police Corps basic training: graduation requirements; records.

STATUTORY AUTHORITY: KRS 15A.070(1), (5), 15A.150, 15A.330(1)(c), (h), 42 U.S.C. 14094, 14099
NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 14094(a) requires a state desiring to participate in the Police Corps Program to designate a lead agency to submit and administer the program in the state. KRS 15A.150 designates the Justice and Public Safety Cabinet to administer all state and federally-funded grant programs related to criminal justice. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training - Kentucky Police Corps basic training course and for maintenance of the resulting basic training records.

Section 1. Definitions. (1) "Cadet" means a person attending the Police Corps basic training course.

(2) "Director" means the director of the Training Operations Division of DOCJT, or his designee.

(3) "Police Corps basic training" means the 1,280 (4-396) 1/2 hour council-approved basic training course conducted by DOCJT; and

(4) "Police Corps director" means the director of the Police Corps section of DOCJT, or his designee.

Section 2. Police Corps Basic Training Content. Police Corps basic training shall consist of 1,280 (4-396) 1/2 hours of training, and require a cadet to demonstrate proficiency in the following three (3) areas:

(1) Area I:
   (a) Five (5) academic tests; and
   (b) American Red Cross certification in the following:
      1. Professional rescuer CPR-automated external defibrillation; and
      2. First aid.

(2) Area II:
   (a) Firearms, including:
      1. Day handgun;
      2. Night handgun;
      3. Shotgun; and
   (b) Firearms familiarization;
   (c) Vehicle operations, including:
      1. Precision course; and
      2. Emergency response course;
   (d) Defensive tactics, which shall include a:
      1. Skills test; and
      2. Pressure point control tactics management system (PPCT) written certification test; and
   (d) Mountain bike.

(3) Area III:
   (a) Breath test, including:
      1. Practical examination; and
   (b) Written examination;
   (b) DUI detection, including:
      1. Practical examination; and
   (c) Criminal Justice Information Systems Mobile Data Terminal, including a combined practical and written examination.

Section 3. Training Modules. Police Corps basic training shall
be divided into nine (9) different training modules on the following subjects:

(1) Orientation to basic training;
(2) Theft;
(3) Warrant/disorder;
(4) Traffic stops;
(5) Driving under the influence (DUI);
(6) Crimes against property;
(7) Collision;
(8) Crimes against persons; and
(9) Graduation.

Section 4. Police Corps Basic Training Graduation Requirements. To graduate from Police Corps basic training, a cadet shall:

(1) Successfully complete a minimum of 1,200 [5356] 1/2 hours of training based upon the curriculum approved by the council in accordance with KRS 15.330 and 503 KAR 1:090;
(2) Attain a seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A cadet who does not achieve a seventy (70) percent overall score shall be considered to have failed Police Corps basic training;
(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A cadet who does not pass all pass or fail training areas shall be considered to have failed Police Corps basic training; and
(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

Section 5. Physical Training Requirements. A cadet shall meet the physical training entry and graduation requirements established in this section.

(1) Physical training entry requirements.

(a) Within five (5) days from the first date of the Police Corps basic training course, the cadet shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the cadet's body weight;
2. Eighteen (18) sit-ups in one (1) minute;
3. 300 meter run in sixty-five (65) seconds;
4. Twenty (20) push-ups; and
5. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds.

(b) If a cadet passes all events when participating in the physical training entry test, he shall have met the physical training entry requirements.

(c) Retest. If a cadet fails to pass all events when participating in the physical training entry test:

1. He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;
2. All failed events shall be retested on the same date;
3. If the cadet passes all previously-failed events on the date of the retest, he shall have met the physical training entry requirements; and
4. If the cadet does not pass all previously-failed events on the date of the retest, he shall be unqualified to participate in the Police Corps basic training course for which he is currently enrolled, and may reapply to participate in a future DOCJT basic training course. The cadet shall receive no credit for the part of the Police Corps basic training course which he has completed.

(2) Physical training graduation requirements.

(a) Within five (5) days from the final date of the Police Corps basic training course, the cadet shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:

1. One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit's body weight;
2. Eighteen (18) sit ups in one (1) minute;
3. 300 meter run in sixty-five (65) seconds;
4. Twenty-five (25) push-ups; and
5. One and five-tenths (1.5) mile run in sixteen (16) minutes fifteen (15) seconds.

(b) If a cadet passes all events when participating in the physical training graduation test, he shall have met the physical training graduation requirements.

(c) Retest. If a cadet fails to pass all events when participating in the physical training graduation test:

1. He shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the Police Corps basic training course;
2. All failed events shall be retested on the same date;
3. If the cadet passes all previously-failed events on the date of the retest, he shall have met the physical training graduation requirements; and
4. If the cadet does not pass all previously-failed events on the date of the retest, he shall be considered to have failed Police Corps basic training.

(3) Physical training safety factors.

(a) Prior to administering the outdoor events, specifically the 300 meter run and the one and five-tenths (1.5) mile run, of the physical training entry or graduation requirements, the physical training instructor shall survey weather conditions to determine whether the outdoor events can be safely performed without risk of physical injury due to:

1. Extreme cold, snow, or icy conditions;
2. Extreme heat, humidity, or a combination thereof; or
3. Inclement weather including lightning, excessive wind, or rain.

(b) If the physical training instructor determines that it would be dangerous to administer the outdoor events due to the weather conditions, the time period in subsections (1)(a) and (2)(a) of this section may be extended until the events can be safely administered.

(c) During week 13 [16] of Police Corps basic training, the cadets shall be administered the events of the physical training requirements for purposes of reporting their progress to their sponsoring law enforcement agencies. If weather conditions prohibit administration of the outdoor events of the physical training graduation examination prior to the last scheduled date of the Police Corps basic training course, a cadet's successful completion of the 300 meter run and the one and five-tenths (1.5) mile run during week 13 [16] testing may be accepted in lieu of having to comply with the examination established in subsection (2)(a) of this section.

Section 6. Reexaminations. (1) A cadet shall be permitted one (1) reexamination in each of the three (3) areas of Police Corps basic training.

(2) A cadet who fails an examination, other than defensive tactics, shall not be reexamined:

(a) Earlier than twenty-four (24) hours from the original examination; or
(b) Later than:
1. Ten (10) days after the original examination. A cadet may submit a written request to the Police Corps Director for an additional five (5) days in which to take the reexamination; or
2. The last scheduled day of the Police Corps basic training course.

(3) Failure of a defensive tactics examination.

(a) If the failure occurs prior to the last scheduled day of defensive tactics training, the cadet shall not be reexamined earlier than the last scheduled day of defensive tactics training.

(b) If the failure occurs on the last scheduled day of defensive tactics training, the cadet shall not be reexamined:

1. Earlier than twenty-four (24) hours from the original examination; or
2. Later than the last scheduled day of the Police Corps basic training course.

(4) A cadet shall be considered to have failed Police Corps basic training if the cadet:

(a) Fails a reexamination in accordance with subsection (1) of this section; or
(b) Fails two (2) examinations in the same area of Police Corps basic training.
Section 7. Failure and Repetition of Police Corps Basic Training. (1) A cadet who has failed a Police Corps basic training course shall be unqualified for future Police Corps basic training courses. The cadet may participate, if qualified, in one (1) DOCJT law enforcement basic training course in its entirety during the following twelve (12) months. (2) The cadet or his agency shall pay all fees for the DOCJT basic training course.

Section 8. Absence. (1) A cadet may have excused absences from Police Corps basic training with approval of the director, or the Police Corps director. (2) An excused absence from Police Corps basic training, which causes a cadet to miss any of the required 1,290 (4306) 1/2 hours of training shall be made up through an additional training assignment.

Section 9. Leave of Absence from Police Corps Basic Training. (1) Pursuant to 42 U.S.C. 14096(e), a cadet: (a) Who requests a leave of absence from Police Corps basic training due to temporary physical or emotional disability shall be granted the leave for a period not to exceed one (1) year, or eighteen (18) months if there are multiple requests; (b) Who requests a leave of absence from Police Corps basic training for a reason other than those described in paragraph (a) of this subsection may be granted the leave for a period not to exceed one (1) year, or eighteen (18) months if there are multiple requests; or (c) Who requests a leave of absence from Police Corps basic training to serve on an official church mission may be granted the leave for a period not to exceed thirty (30) months. (2) The length of leaves of absence from educational study, Police Corps basic training, or service that a cadet has previously received will be deducted from the time available for a leave of absence from Police Corps basic training. (3) A cadet who receives a leave of absence shall be required to repeat Police Corps basic training in its entirety.

Section 10. Maintenance of Records. (1) All training records required for Kentucky Law Enforcement Foundation Program Fund purposes shall be retained by DOCJT, but a copy of pertinent facts shall be sent to the fund administrator upon written request. (a) All training records shall be: (a) Available to the Office of the Police Corps and Law Enforcement Education of the United States Justice Department, the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and (b) Maintained in accordance with applicable provisions of KRS Chapter 171.

WILLIAM F. WALSH, Ph.D., Chair
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in Room 311, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2004, five working 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 canceled. The 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. Written comment shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the proposed person.

CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137, phone (859) 622-3073, fax (859) 622-3162.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephen D. Lynn
(1) Provide a brief summary of: (a) What this administrative regulation does: establishes the guidelines and procedures for graduation from the Department of Criminal Justice Training - Kentucky Police Corps basic training course. (b) The necessity of this administrative regulation: the regulation is necessary so that the Kentucky Law Enforcement Council may fulfill its responsibility, as established in KRS 15.330, to establish and prescribe qualifications for attendance to the Department of Criminal Justice Training - Kentucky Police Corps basic training course. (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.150 requires the Justice and Public Safety Cabinet to administer "all state programs and all state and federally funded grant programs related to criminal justice", KRS 15.330(1)(c)(b) and (h) authorize the Kentucky Law Enforcement Council to prescribe qualifications for attendance of law enforcement training course and to promulgate reasonable rules and administrative regulations. This administrative regulation establishes graduation requirements for the Department of Criminal Justice Training - Kentucky Police Corps. (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent rules and procedures for graduation from the Department of Criminal Justice Training - Kentucky Police Corps. (e) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: The present amendment changes the administrative regulation as follows: 1. Cadets must take 1290 1/2 hours of training; and 2. Week 16 physical agility testing (In Section 5(3)(c)) has been changed to week 13. (b) The necessity of the amendment to this administrative regulation: These amendments are necessary to improve Police Corps basic training. (c) How the amendment conforms to the content of the authorizing statutes: Please see response contained in (1)(c) herein. (d) How the amendment will assist in the effective administration of the statutes: Please see response in (2)(b) herein. (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 12 local law enforcement agencies in the commonwealth shall be affected as a result of the Department of Criminal Justice Training - Kentucky Police Corps basic training course beginning in June 2004. (f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that agencies should experience positive results from the implementation of this administrative regulation. Upon graduation, Kentucky Police Corps cadets will be assigned to various agencies for a period of 4 years. The Federal Police Corps Act (42 U.S.C. sections 14081 et seq,) authorizes the award of a scholarship to participants in the Police Corps who agree to work in a state or local police force after graduation. (g) Provide an assessment of how much it will cost to implement this administrative regulation: (a) Initially: No additional state costs. (b) On a continuing basis: No additional state costs. (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds received pursuant to the Police Corps Act. (d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary. (e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does
not establish or increase fees.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(Amendment)

503 KAR 3:010. Basic law enforcement training course
recruit conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070(1)
STATUTORY AUTHORITY: KRS 15A.070(5) [Chapter 13A,
46A-160]
NECESSITY, FUNCTION, AND CONFORMITY: KRS
15A.070(1) authorizes Department of Criminal Justice Training to
establish, supervise and coordinate training programs and schools
for law enforcement personnel. This administrative regulation es-
tablishes [prescribes] conduct requirements of recruits attending
basic law enforcement training courses conducted by the Depart-
ment of Criminal Justice Training, [prescribes] procedures for dis-
ciplinary action, and [sets] penalties for violations of conduct re-
quirements.

Section 1. Uniforms and Operator's License Required. A recruit
shall provide the uniforms required in Section 6(8) of this adminis-
trative regulation and present a valid motor vehicle operator's li-
cense to participate in the basic training course.

Section 2. Removing a Recruit from the Course. (1) Unquali-
fied recruit. If a recruit is not qualified to participate in the basic
training course, he shall:
(a) Be removed from basic training by the:
1. Commissioner;
2. Director;
3. Branch manager; or
4. Section supervisor;
(b) Receive no credit for the part of the course he has com-
pleted.
(c) If a recruit is removed from training, pursuant to subsection
(1) of this section, within thirty (30) days of the removal, he may
request in writing an administrative hearing, which shall comply
with KRS Chapter 13B.
(d) A recruit shall be considered unqualified if he:
1. Or his law enforcement agency files an incomplete or
fraudulent application to attend basic training, or otherwise fails to
comply with admissions requirements;
2. Is not presently employed as a law enforcement officer and
has not received special permission to attend;
3. Arrives at the beginning of basic training physically unable to
participate because of:
   a. Physical injury;
   b. Being under the influence of alcohol or drugs (prescription or
illegal); or
   c. Failure of the physical training entry requirements as found
503 KAR 1:0110 If the recruit is required to complete basic
training in order to fulfill the peace officer certification provisions as
found in KRS 15.380 to 15.402;
4. Has had prior disciplinary action while at DOCJT which
would prevent participation (expelled or suspended from training),
or has a pending disciplinary action which was initiated during a
previous DOCJT training course;
5. Is unprepared to participate in training due to his arrival
without the required equipment, license, uniform, or preparation;
(2) Agency's request. The department shall remove a recruit
from basic training upon the department's receipt of a written re-
quest from the recruit's law enforcement agency. The recruit shall
receive no credit for the part of the course he has completed.

Section 3. Gifts. Gifts from recruits to department staff mem-
bers shall conform with the Executive Branch Code of Ethics (KRS
11A.040).

Section 4. Penalties for Misconduct. (1) The following penalties
shall apply to a recruit's failure to meet conduct or Honor Code
requirements of the department. The penalties are listed in order
of decreasing severity.
(a) Expulsion. The recruit is dismissed from the course, and all
privileges are terminated. The recruit may not reapply for admis-
sion to the department's basic training course for five (5) years
from the date of expulsion.
(b) Suspension. The recruit is suspended from training for a
specified period of time, not to exceed one (1) year; all privileges
are rescinded during the suspension period.
(c) Probation. The recruit is placed on probation for a specified
period of time, not to exceed the final date of the basic training
course in which he is currently enrolled. A loss of privileges may be
imposed during the period of probation. A violation of any conduct
or Honor Code requirement during the period of probation shall
result in an extension of the period of probation, additional loss of
privileges, suspension, or expulsion.
(d) Loss of privileges. The recruit's privileges as specified in
the imposed penalty are rescinded for a stated period of time. The
recruit's participation in training activities is not affected.
(e) Written reprimand. The recruit is reprimanded in writing for
violating a conduct or Honor Code requirement.
(f) Verbal warning. The recruit is warned verbally that he has
violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.
(a) If a recruit has received a penalty for violating a conduct or
Honor Code requirement, upon a second violation of any conduct
or Honor Code requirement the next higher penalty shall be added
to the list of penalties which may be imposed for the second viola-
tion.
(b) If a recruit has previously received two (2) penalties for
violating two (2) conduct or Honor Code requirements, upon a third
or subsequent violation of any conduct or Honor Code requirement
the next two (2) higher penalties shall be added to the list of penal-
ties which may be imposed for the third or subsequent violation.
(3) Giving notice of disciplinary action to recruit. The depart-
ment shall give written notice to a recruit of any penalty imposed
upon him.
(a) Penalty records.
(b) The department shall keep a written record of any penalty
imposed on a recruit.
(c) A copy of any penalty imposed on a recruit shall be placed
in his basic training file.
(d) Only the department, the recruit, and the recruit's agency
head shall have access to the penalty records in a recruit's basic
training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If
the conduct or condition of a recruit constitutes an immediate dan-
ger or an immediate threat of danger to self or others, or is disrup-
tive of, or is an immediate threat to be disruptive of a department
activity, a department staff member may take all reasonable steps
necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic
training course shall meet the following conduct requirements:
(1) General conduct, chain of command. All communications
shall follow chain of command of the department. Exceptions are
the unavailability of a supervisor, or the recruit's complaint regard-
ing a supervisor. Penalty: verbal warning or written reprimand.
(2) General conduct, insubordination. A recruit shall:
(a) Obey a lawful order from a department staff member. Pen-
alty: verbal warning, written reprimand, loss of privileges, proba-
tion, or suspension.
(b) Refrain from vulgarity, rudeness, violence, threatening, or
offensive confrontations, or other disrespectful conduct directed
toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand, probation, or suspension.

(3) General conduct, grooming. The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit’s agency and good cause shown. A recruit’s hair shall not be unkempt and shall not be over the collar. Penalty: verbal warning or written reprimand.

(4) General conduct, alcoholic beverages and other intoxicants.

(a) A recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending a basic training course. For purposes of this section, “attending a basic training course” shall include all dates of training and periods when residing in the dormitory. A recruit shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances. A recruit shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department’s expense. Testing shall be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director or commissioner has a reasonable suspicion that the recruit has violated the provisions of this section. Such testing may be requested of all members of a basic training class or all dormitory residents. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or others. A recruit shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possession intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 337.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repair of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unrepaired or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Depending on the nature of the conduct, the recruit shall be penalized by a verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion. Additionally, the appropriate prosecutorial authority shall be notified of the activity if it constitutes a felony or class A misdemeanor, and may be notified of other activity when appropriate.

(b) Engage in conduct which creates a danger or risk of danger to the recruit or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(c) Engage in conduct which violates an Eastern Kentucky University policy or rule. A copy of the policies and rules shall be given to each recruit at the beginning of the course. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them as required by the department. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:

1. Clean, pressed and in good condition;
2. Appropriately sized to fit the recruit and not excessively loose, baggy, or tight;
3. Worn over a clean white tee-shirt, visible at the neck; and
4. Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) Jewelry. The recruit may wear:

1. One (1) ring per hand. A wedding and engagement ring worn together on the left hand shall be considered one (1) ring; or
2. Necklaces if worn under the tee-shirt and not visible. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Additional clothing may be worn during a training activity if authorized by the instructor.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for ten (10) minutes or more. A recruit is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence when possible. Penalty for an unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from basic training must be approved by the section supervisor or branch manager.

(c) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that training area.
(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.
(a) A recruit shall be attentive during training activities. Penalty: verbal warning or written reprimand.
(b) A recruit shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.
(c) A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.
(d) A recruit shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.
(a) A recruit shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or other evaluation result. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: suspension or expulsion.
(b) A recruit shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during basic training. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.
(a) During the basic training course, when attending in Madison County, a recruit shall reside in the residence hall designated by the department.
(b) A recruit shall return to his residence hall at curfew times designated by the commissioner. Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, probation.
(c) A recruit shall observe "lights out" by 11:30 p.m. Sunday through Thursday, and Friday or Saturday if a training session is scheduled for the following day, except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.
(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges, probation.
(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.
(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.
(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.
(h) A recruit residing at the residence hall shall not:
1. Have any person of the opposite sex in his room, or visit in the room of a recruit of the opposite sex without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.
2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.
3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.
4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat or tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the commonwealth and the administrative regulations of the Department of Criminal Justice Education. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator, in cooperation with the class shall designate a minimum of one (1) Honor Code representative during the first week of basic training. The Honor Code representative may be replaced:
(a) In the case of nonperformance of duties, including conduct violations; or
(b) When the coordinator, in cooperation with the class, determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative will recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a recruit with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for the violation shall be solicited from the Honor Code representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:
(1) Recruit performance report which shall be completed at four (4) week intervals and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal skills, and appearance.
(2) Immediate notice of specific nonperformance or lack of progress.
(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:
(a) Parking a marked police vehicle at:
   1. Bar;
   2. Tavern;
   3. Lounge;
   4. Nightclub; or
   5. Other establishment with the primary purpose of serving alcoholic beverages;
(b) Disorderly conduct;
(c) Speeding; or
(d) Other behavior that gives rise to a citizen's complaint.
(4) Written notice of any conduct or Honor Code penalty imposed upon the recruit.
(5) Notice when a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.
(6) Notice when a recruit has been removed from training.
pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or when a recruit has been removed from training pending a disciplinary hearing as defined in Section 14(3) of this administrative regulation.

(7) Immediate notice of concerns related to the recruit's safety, or physical or emotional health.

Section 9. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a recruit unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 16 of this administrative regulation. To have the authority to impose summary discipline, the staff member must have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand.

(c) The branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) When a charge is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit has been charged with misconduct for which suspension or expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty should the recruit be found guilty of the conduct violation.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds to believe that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall:

(a) File such charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;

(c) State the time, date and place the recruit shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the recruit at least forty-eight (48) hours before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the recruit;

2. Explain to the recruit:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 138.050 shall be served on the recruit within forty-eight (48) hours of the initial appearance before the commissioner.

(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the recruit from some or all training until the hearing if:

(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be deter-
VOLUME 30, NUMBER 11 – MAY 1, 2004

minded upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in Room 211, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2004, five workdays 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 canceled. The 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. Written comment shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137, phone (859) 622-3073, fax (859) 622-3162.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephen D. Lynn

(1) Provide a brief summary of:
(a) What this administrative regulation does: establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training law enforcement basic training course.
(b) The necessity of this administrative regulation: the regulation is necessary to establish clear conduct requirements for law enforcement recruits to establish the procedures and penalties for those who violate the conduct requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend law enforcement basic training.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The present amendment changes the administrative regulation to delete Section 16, relating to administrative appeals.
(b) The necessity of the amendment to this administrative regulation: The provisions for appeal of an administrative hearing are contained in KRS 13B.140, 13B.150, and 13B.160. The procedures currently included in Section 16 of this administrative regulation differ from and exceed the requirements found in the statutes. Pursuant to KRS 13A.120(4), Section 16 is null, void, and unenforceable. This amendment is necessary to delete Section 16 from the regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Please see response contained in (1)(c) herein.
(d) How the amendment will assist in the effective administration of the statutes: Please see response in (2)(b) herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the commonwealth that utilize DOCJT basic training, which is approximately 400 agencies, including most state, county, and local agencies, but excluding the Kentucky State Police, and the Lexington, Louisville and Jefferson County police departments.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that agencies should experience little impact due to the amendment. The requirements for administrative appeals have been contained in KRS Chapter 13B for several years.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional state costs.
(b) On a continuing basis: No additional state costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEPPF).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase fees.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training

(Amendment)

503 KAR 3:020. Law enforcement training course trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15A.070(1)
STATUTORY AUTHORITY: KRS 15A.070(5) [16A.160]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes [prescribes] conduct requirements for [9] trainees attending in-service law enforcement training courses conducted by the Department of Criminal Justice Training, [prescribes] procedures for disciplinary action, and penalties for violations of conduct requirements [sets penalties].

Section 1. Removing a Trainee from the Course. (1) Unqualified trainee. If a trainee is not qualified to participate in training, he shall:
(a) Be removed from training by the:
1. Director;
2. Branch manager; or
3. Section supervisor;
(b) Not receive credit for completed portions of training.
(2) A trainee shall be considered unqualified if:
(a) He or his agency files an incomplete or fraudulent application to attend the training course;
(b) He is not presently employed as a law enforcement officer and has not received special permission to attend;
(c) He arrives at the beginning of training physically unable to participate because of:
1. Physical injury; or
2. Being under the influence of alcohol or drugs (prescription or illegal);
(d) He has had prior disciplinary action while at DOCJT which would prevent participation (excluded or suspended from training),
or has a pending disciplinary action which was initiated during a previous DOCJT training course;
(e) He is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;
(f) He failed to complete a prerequisite law enforcement training course; or
(g) He is not employed in a capacity for which the course is designed and has not received special permission to attend.
(3) If a trainee is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.
(4) Any request. The department shall remove a trainee from training upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of the course.

Section 2. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS 11A.040.

Section 3. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct requirements of the department. The penalties are listed in order of decreasing severity.
(a) Expulsion. The trainee is dismissed from the course and all privileges are terminated.
(b) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in training activities is not affected.
(c) Written reprimand. The trainee is reprimanded in writing for violating a conduct requirement.
(d) Verbal warning. The trainee is warned verbally that he has violated a conduct requirement.
(2) Second and subsequent violations
(a) If a trainee has received a penalty for violating a conduct requirement, upon a second violation of any conduct requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.
(b) If a trainee has previously received two (2) penalties for violating two (2) conduct requirements, upon a third or subsequent violation of any conduct requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.
(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct requirement and has requested a hearing.
(4) Penalty records.
(a) The department shall keep a written record of any penalty imposed on a trainee.
(b) A copy of any penalty imposed on a trainee shall be placed in his training file.
(c) Only the department, the trainee, and the trainee's agency head shall have access to the penalty records in a trainee's training file unless broader access is required by law.

Section 4. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 5. Conduct Requirements. (1) A trainee attending a training course shall meet the following conduct requirements:
(a) General conduct - chain of command.
(b) All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.
(2) General conduct - insubordination. A trainee shall:
(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges.
(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand.
(3) General conduct - grooming. The trainee shall maintain a personal professional appearance which reflects favorably upon the trainee, the department, and the trainee's agency. Penalty: verbal warning or written reprimand.
(4) General conduct - alcoholic beverages and other intoxicants.
A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending a training course or bring alcoholic beverages into the Thompson Residence Hall. Penalty: written reprimand, loss of privileges, or expulsion.
(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand.
(c) Confiscation.
1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully possessed intoxicating substance, he shall immediately confiscate it.
2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.
(5) General conduct - weapons and other dangerous devices.
(a) General conduct - weapons and other dangerous devices.
A trainee may possess his regular service weapon or authorized off-duty weapon, including ammunition, on property used by the department. A trainee shall not possess any other deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.
(b) Confiscation.
1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully possessed weapon or other dangerous device he shall immediately confiscate it.
2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.
(6) General conduct - department property.
(a) A trainee shall not negligently or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.
(b) A trainee shall not have successfully completed training until he has returned all issued items or made satisfactory arrangements to pay for unreimbursed items.
(7) General conduct - unbecoming a trainee. A trainee shall not:
(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a training class. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion. Additionally, the appropriate prosecutorial authority may be notified of the activity.
(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 351.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges,
or expulsion.

(6) Training activities - absences.

(a) A trainee is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall give advance notice of an absence when possible. Penalty: for an unexcused absence: verbal warning or written reprimand; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from training must be approved by the section supervisor or branch manager. Absences shall only be excused for legitimate reasons including sickness, court appearances, and emergencies. Written notice shall be given prior to the absence, or in the case of unexpected absences on the first day upon returning.

(c) If a trainee is absent less than ten (10) percent of a subject area, excused or unexcused, he shall make up for the absence by completing a special assignment. The assignment shall be provided by the instructor who taught the missed subject area and shall be approved by the section supervisor. Failure to complete the assignment shall be deemed a failure for that subject area.

(d) A trainee shall repeat a subject area in which he has had an absence of ten (10) percent or more, excused or unexcused.

(e) A trainee shall not be allowed to repeat a test that occurs during the trainee’s unexcused absence.

(7) Training activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(10) Training activities - general conduct.

(a) A trainee shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not use tobacco products during, or bring food or drink into, any department training activity, regardless of location, unless permitted by the branch manager. Penalty: verbal warning or written reprimand.

(c) A trainee shall not negligently or intentionally engage in conduct which creates or may create a risk of injury to others during a training session. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(11) Training activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(12) Residence hall.

(a) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(b) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(c) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(d) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(e) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges.

2. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

3. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges.

Section 6. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 8 through 13 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning or written reprimand.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 7. Removal from Training Pending an Initial Appearance Before the Commissioner. (1) When a charge is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee has been charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 8. Complaint. Anyone having reasonable grounds for believing that a trainee has violated any of the conduct requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 9. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 10. Review by Legal Officer: Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File such charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner. Have a copy served upon the trainee either in person or by mail.

Section 11. Initial Appearance Before the Commissioner. (1)
The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:
(a) The legal officer shall:
   1. Read the charges to the trainee;
   2. Explain to the trainee:
      a. The charges;
      b. His right to an administrative [a] hearing in accordance with KRS Chapter 13B; and
      c. His right to be represented by legal counsel.
   (b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive an administrative [a] hearing, or deny the charges are true and ask for an administrative [a] hearing.
   (c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives an administrative [a] hearing.
   (d) The trainee shall be requested to answer the charges.
   (e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives an administrative [a] hearing:
      1. He shall be permitted to make a statement of explanation; and
      2. The commissioner shall impose a penalty.
   (f) If the trainee denies the charges and requests an administrative [a] hearing, or refuses to answer the charges, the commissioner shall set a date for the administrative hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.
   (3) The commissioner may remove the trainee from some or all training until the administrative hearing if:
      (a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or
      (b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 12. Hearing. The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

[Section 13. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinets.
(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part of 503 KAR 3:010 by reference.
(b) A copy of the order being appealed shall be attached to the notice of appeal.
(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.
(2) The appeal shall be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.
(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.]

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in Room 211, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2004, five workdays 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 canceled. The 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. Written comment shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137; phone (859) 622-3073, fax (859) 622-5162.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephen D. Lynn
(1) Provide a brief summary of:
(a) What this administrative regulation does: establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training law enforcement professional development courses.
(b) The necessity of this administrative regulation: the regulation is necessary to establish clear conduct requirements for law enforcement trainees and to establish the procedures and penalties for those who violate the conduct requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend law enforcement professional development training.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The present amendment changes the administrative regulation to delete Section 13, relating to administrative appeals.
(b) The necessity of the amendment to this administrative regulation: The provisions for appeal of an administrative hearing are contained in KRS 13B.140, 13B.150, and 13B.160. The procedures currently included in Section 13 of this administrative regulation differ from and exceed the requirements found in the statutes. Pursuant to KRS 13A.120(4), Section 13 is null, void, and unenforceable. This amendment is necessary to delete Section 13 from the regulation.
(c) How the amendment conforms to the content of the authorizing statutes: Please see response contained in (1)(c) herein.
(d) How the amendment will assist in the effective administration of the statutes: Please see response in (2)(b) herein.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the commonwealth that utilize DCCTJ professional development training, which is approximately 400 agencies, including most state, county and local agencies.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that agencies should experience little impact due to the amendment. The requirements for administrative appeals have been contained in KRS Chapter 13B for several years.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional state costs;
(b) On a continuing basis: No additional state costs.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFFF).
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is
necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase fees.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(Amendment)

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.530-15.590
STATUTORY AUTHORITY: KRS [16:660.] 15.590, 15A.070(1). (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 requires the Commissioner of the Department of Criminal Justice Training to promulgate necessary administrative regulations for the administration of telecommunications training, in-service inservice training and practices [16A.070 authorizes the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel, and] any other justice or non-law enforcement-related personnel as prescribed by the secretary, which includes law enforcement telecommunicators pursuant to KRS 15.660. This administrative regulation prescribes conduct requirements of trainees attending the telecommunications academy conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms Required. (1) A trainee shall wear a uniform, approved by the department, while participating in the telecommunications academy.

(2) The required uniform shall consist of:

(a) Men:
   1. Gray polo shirt with DOCJT logo, supplied by the department;
   2. Solid black dress pants with belt loops. Cargo pants shall not be worn;
   3. [Solid white button-down dress shirt with collar, long-or short-sleeves;]
   4. Necktie;
   5. [Dress pants with belt-loops, solid black, dark-gray, or dark blue;]
   6. Black belt;
   7. [6:] Black or navy-blue socks;
   8. Black, plain-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(b) Women:
   1. Gray polo shirt with DOCJT logo, supplied by the department;
   2. Solid black dress pants with belt loops or skirt. Cargo pants shall not be worn;
   3. [Solid-white plain dress shirt with collar, button-front, long-or short-sleeves;]
   4. [6:] Black or navy-blue socks. Solid-color hose may be substituted, black, navy-blue, or flesh tones;
   5. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform.
   6. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(a) Dress jacket or sport coat, solid gray or dark blue is recommended;
(b) Pins issued by the trainee's agency;
(c) The Department of Criminal Justice Training cap which shall be issued to the trainee on the first day of the academy.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, he shall:

(a) Be removed from the academy by:
   1. Director;
   2. Branch manager; or
   3. Section supervisor;
(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.
(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.
(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.
(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.
(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.
(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.
(b) Except where required by law, a trainee's training file shall not be available for access except by:
   1. The department;
   2. The trainee; or
   3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department
activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the telecommunications academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:
   (a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.
   (b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct - grooming. A trainee shall:
   (a) Maintain proper appearance at all times. Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants. A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while enrolled in a telecommunications academy. Penalty: written reprimand, loss of privileges, suspension or expulsion.

(5) General conduct - weapons and other dangerous devices. A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except in accordance with the written policy of the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(c) Confiscation. A trainee shall not possess or use weapons or other dangerous devices.

(1) If a trainee violates this policy, the trainee shall be immediately confiscated.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property. A trainee shall:
   (a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the telecommunications academy. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(7) General conduct - conduct unbecoming a trainee. A trainee shall:
   (a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the telecommunications academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(8) Academy activities - uniforms. A trainee shall:
   (a) Wear the uniform required by Section 1 of this administrative. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be clean, pressed and in good condition. Penalty: verbal warning or written reprimand.

(c) A name tag, provided by the department, shall be worn on the left shirt breast. Penalty: verbal warning or written reprimand.

(d) Sleeves on long-sleeved shirts shall not be rolled up. Penalty: verbal warning or written reprimand.

(e) Additional clothing may be worn during an academy activity authorized by the instructor.

(f) Academy activities - absences. A trainee shall be considered absent if he is not physically present in a class or other required academy activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required academy activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty: verbal warning or written reprimand.

(c) Confiscation. A trainee shall be excused if the trainee was absent due to:
   1. Illness;
   2. Illness of an immediate family member;
   3. Death of an immediate family member;
   4. Necessity of trainee's agency;
   5. Emergency circumstances.

(d) If a trainee is absent, excused or unaexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that academy area.

(9) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(10) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not use tobacco products during, or bring food or drink into a academy activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(c) A trainee shall not engage in conduct which creates or may
create a risk of injury to others during a training session.

(12) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(13) Residence hall.

(a) During the telecommunications academy, when attending in Madison County, a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Penalties: verbal warning or written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand, loss of privileges.

(f) The use of hot plates is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The trainee shall abide by the provisions of the honor code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talents and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As trainees of the Department of Criminal Justice Training, Telecommunications Academy, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature of confined to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforce-

ment.

(2) The penalty for violating the honor code shall be: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(3) The class shall elect an honor code representative during the first week of the academy.

(4) All trainees shall report honor code violations to the honor code representative who shall report the offense to the class coordinator. The representative will recommend the penalty to be imposed for the violation.

(5) All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department’s Responsibilities to Trainee’s Agency.

In order to keep the agency advised of the trainee’s progress and performance in the telecommunications academy so that the agency may adequately assess the trainee’s ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the trainee’s agency:

(1) Trainee performance report which shall be completed at four (4) week intervals and shall include trainee conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle parked at a:

1. Bar;
2. Tavern;
3. Lounge;
4. Nightclub;
5. Other establishment with the primary purpose of serving alcoholic beverages.

(b) Disorderly conduct;
(c) Speeding;
(d) Other behavior that gives rise to a citizen’s complaint.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members shall have the authority to impose the specified penalties without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall be advised of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee was dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy pend-
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...ing an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:
   (a) Take no action if none is justified by the evidence; or
   (b) Impose appropriate summary discipline; or
   (c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents, including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:
   (a) File such charges against the trainee as he believes are justified by the evidence; or
   (b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:
   (a) Be in writing;
   (b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;
   (c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(5) Be signed by the legal officer; and

(6) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:
   (a) The legal officer shall:
      1. Read the charges to the trainee;
      2. Explain to the trainee:
         a. The charges;
         b. His right to a hearing in accordance with KRS Chapter 13B; and
      c. His right to be represented by legal counsel.
   (b) The legal officer shall explain to the trainee the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.
   (c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.
   (d) The trainee shall be requested to answer the charges.
   (e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:
      1. He shall be permitted to make a statement of explanation; and
      2. The commissioner shall impose a penalty.
   (f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing.

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or
(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

[Section 16. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.]

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13, 2004 at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in Room 211, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this public hearing shall notify this agency in writing by May 14, 2004, five workdays 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 canceled. The 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. Written comment shall be accepted until June 1, 2004.

SEND WRITTEN NOTIFICATION OF INTENT TO BE HEARD AT THE PUBLIC HEARING OR WRITTEN COMMENTS ON THE PROPOSED ADMINISTRATIVE REGULATION TO THE CONTACT PERSON.

CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137; phone (859) 622-3073, fax (859) 622-3162.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training Telecommunications Academy.

(b) The necessity of this administrative regulation: the regulation is necessary to establish clear conduct requirements for law enforcement telecommunicators and to establish the procedures...
and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15.590 requires the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations necessary for training, in-service training, and telecommunications practices;

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend the Telecommunications Academy.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The present amendment changes the administrative regulation to delete Section 16, relating to administrative appeals, and to delete Section 17 that created a form for filing an appeal.

(b) The necessity of the amendment to this administrative regulation: The provisions for appeal of an administrative hearing are contained in KRS 13B.140, 13B.150, and 13B.160. The procedures currently included in Section 16 of this administrative regulation differ from and exceed the requirements found in the statutes. Pursuant to KRS 13A.120(4), Section 16 is null, void, and unenforceable. This amendment is necessary to delete Sections 16 and 17 from the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Please see response contained in (1)(c) herein.

(d) How the amendment will assist in the effective administration of the statutes: Please see response in (2)(b) herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the commonwealth that utilize DOCJT telecommunications academy training, which is presently approximately 200 agencies, including most state, county and local agencies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that agencies should experience little impact due to the amendment. The requirements for administrative appeals have been contained in KRS Chapter 13B for several years.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No additional state costs;

(b) On a continuing basis: No additional state costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The restricted Kentucky Law Enforcement Foundation Program Fund (KLEFP).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase fees.

(9) TIERING: Is tiering applied? No, tiering was not applied.

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training

503 KAR 3:100. Department of Criminal Justice Training - Kentucky Police Corps basic training course cadet conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070(1); 42 U.S.C. 14091- 14102

NECESSITY, FUNCTION, AND CONFORMITY: 42 U.S.C. 14094(a) requires a state desiring to participate in the Police Corps Program to designate a lead agency to submit and administer the program in the state. KRS 15A.150 designates the Justice and Public Safety Cabinet to administer all state and federally-funded grant programs related to criminal justice. This administrative regulation establishes the conduct requirements for cadets attending the Kentucky Police Corps basic training course conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Definitions. (1) "Cadet" means a person attending the Police Corps basic training course;

(2) "OPCLEE" means the Office of the Police Corps and Law Enforcement Education of the United States Justice Department;

(3) "Police Corps basic training" means the 1,290 1/2 hour council approved basic training course conducted by the department;

(4) "Police Corps Director" means the director of the Police Corps section of the department, or his designee.

Section 2. Uniforms and Operator's License Required. A cadet shall provide the uniforms required in Section 8(8) of this administrative regulation and present a valid motor vehicle operator's license to participate in the Police Corps basic training course.

Section 3. Class Coordinator. (1) The class coordinator for a Police Corps basic training class shall also serve as its ombudsman.

(2) The class coordinator shall be available to:

(a) Assist cadets who experience problems during Police Corps basic training;

(b) Explain the Department of Criminal Justice Training - Kentucky Police Corps administrative regulations and position regarding cadet conduct and responsibilities; and

(c) Assist cadets with concerns that may adversely affect them or the department.

(3) The class coordinator shall ensure fair and equitable treatment for the cadets in his charge.

Section 4. Removing an Unqualified Cadet from Police Corps Basic Training. (1) If a cadet is not qualified to participate in the Police Corps basic training course, he shall:

(a) Be removed from Police Corps basic training by the:

1. Commissioner;

2. Director; or

3. Police Corps Director; and

(b) Not Receive credit for the part of the Police Corps basic training course he has completed.

(2) If a cadet is removed from training, pursuant to subsection (1)(a) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) A cadet shall be considered unqualified if he:

(a) Files an incomplete or fraudulent application to attend Police Corps basic training, or otherwise fails to comply with admissions requirements;

(b) Does not meet all requirements for Police Corps participation as defined by the OPCLEE in 42 U.S.C. 14091-14102 and 28 C.F.R. 82.1-82.13, including:

1. Not having received a bachelor's degree from an accredited four (4) year college or university; and

2. Having previous law enforcement experience;
(c) Arrives at the beginning of the Police Corps basic training course physically unable to participate because of:
1. Physical injury;
2. Being under the influence of alcohol or drugs (prescription or illegal); or
3. Failure of the physical training entry requirements as found in 503 KAR 1:150;
(d) Has had prior disciplinary action while at the department which would prevent participation (expelled or suspended from training), or has a pending disciplinary action which was initiated during a previous department training course; or
(e) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation.

Section 5. Gifts. Gifts from cadets to department staff members shall conform with the Executive Branch Code of Ethics (KRS 11A.040).

Section 6. Penalties for Misconduct. (1) The following penalties shall apply to a cadet's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The cadet shall be dismissed from the Police Corps basic training course, and all privileges shall be terminated. The cadet shall be ineligible for future Police Corps basic training courses, and shall not reapply for admission to the department's basic training course for five (5) years from the date of expulsion.
(b) Suspension. The cadet shall be suspended from department training for a specified period of time, which shall not exceed one (1) year. All privileges shall be rescinded during the suspension period.
(c) Probation. The cadet shall be placed on probation for a specified period of time, which shall not exceed the final date of the Police Corps basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privileges, suspension, or expulsion.
(d) Loss of privileges. The cadet's privileges as specified in the imposed penalty shall be rescinded for a stated period of time. The cadet's participation in training activities shall not be affected.
(e) Written reprimand. The cadet shall be reprimanded in writing for violating a conduct or Honor Code requirement.
(f) Verbal warning. The cadet shall be warned verbally that he has violated a conduct or Honor Code requirement.
(2) Second and subsequent violations.
(a) If a cadet has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.
(b) If a cadet has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the third or subsequent violation.
(c) Giving notice of disciplinary action to cadet. The department shall give written notice to a cadet of any penalty imposed upon him.
(d) Penalty records. The department shall keep a written record of any penalty imposed on a cadet.
(e) A copy of any penalty imposed on a cadet shall be placed in his basic training file.
(f) Only the OPCLEE, the department, and the cadet shall have access to the penalty records in a cadet's basic training file unless broader access is required by law.

Section 7. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a cadet constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 8. Conduct Requirements. A cadet attending the Police Corps basic training course shall meet the following conduct requirements:
(1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions shall be made for unavailability of a supervisor, or the cadet's complaint regarding a supervisor. The penalty shall be: verbal warning or written reprimand.
(2) General conduct, insubordination. A cadet shall:
(a) Obey a lawful order from a department staff member. The penalty shall be: verbal warning, written reprimand, loss of privileges, probation, or suspension.
(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, cadet, recruit or other department trainee, or guest. The penalty shall be: verbal warning, written reprimand, probation, or suspension.
(3) General conduct, grooming. The cadet shall be clean shaven; shall not wear jewelry longer than the bottom of the ear lobe. A mustache shall be permitted if the cadet had the mustache upon arrival and it is kept neatly trimmed. A cadet's hair shall not be unkempt or over the collar. The penalty shall be: verbal warning or written reprimand.
(4) General conduct, alcoholic beverages and other intoxicants.
(a) A cadet shall not possess, consume, nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while attending Police Corps basic training, which shall include all dates of training and periods when residing in the dormitory. A cadet shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician. A cadet shall submit to testing as requested or the cadet's complaint shall elicit from the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense. Testing shall be requested if a department or dormitory staff member, instructor, section supervisor, branch manager, director, or commissioner has a reasonable suspicion that the cadet has violated the provisions of this section. Testing may be randomly requested of all cadets. The penalty shall be: written reprimand, loss of privileges, probation, suspension, or expulsion.
(b) If a cadet has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the cadet may be impaired or may endanger himself or other people in the cadet's area of responsibility. A cadet shall advise the chain of command or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. The penalty shall be: verbal warning, written reprimand, probation, or suspension.
(c) Confiscation.
1. If a cadet possesses weapons or other dangerous items, the department shall have the right to seize the item without prejudice to the cadet's standing, provided that the item is not authorized for use by the department, nor is it otherwise authorized for use by the cadet. A cadet who possesses a weapon or other dangerous item shall be suspended from training until the item is confiscated by department personnel.
2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.
(5) General conduct, weapons and other dangerous devices.
(a) A cadet shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 227.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, on property used by the department except under circumstances specifically authorized by the department for training purposes. The penalty shall be: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.
(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (except for repairs which may require the expertise of a
qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. The penalty shall be: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.
(1) If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.
2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, department property.
(a) A cadet shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. The penalty shall be: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) A cadet shall not have successfully completed Police Corps basic training, and shall not be allowed to graduate, until he has returned all issued items or made satisfactory arrangements to pay for unreembursed items in the form of partial disbursements.

(7) General conduct, conduct unbecoming a cadet A cadet shall not:
(a) Engage in criminal activity, acts which would constitute a felony, misdemeanor or violation, while enrolled in a Police Corps basic training course. Depending on the nature of the conduct, the cadet may be penalized by a verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion. Additionally, the appropriate prosecutorial authority shall be notified of the activity if it constitutes a felony or Class A misdemeanor, and may be notified of other activity if appropriate.

(b) Engage in conduct which creates a danger or risk of danger to the cadet or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous, or threatening conduct, or engage in sexual harassment or conduct which is patently offensive. The penalty shall be: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(8) Training activities, uniforms.
(a) A cadet shall maintain all issued uniforms and wear them as required by the department. The penalty shall be: verbal warning, written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:
1. Clean, pressed, and in good condition;
2. Appropriately sized to fit the cadet and not excessively loose, baggy, or tight;
3. Worn over a clean white tee-shirt, visible at the neck; and
4. Worn with: a white or black police-type belt, clean black police-type footwear, black or navy blue socks, or outdoors, a department cap. The penalty shall be: verbal warning or written reprimand.

(c) All other uniforms, including physical fitness uniforms, shall be worn in a manner as directed by the department.

(d) Jewelry. The cadet may wear:
1. One (1) ring per hand. A wedding and engagement ring worn together on the left hand shall be considered one (1) ring; and
2. Necklaces if worn under the tee-shirt and not visible. The penalty shall be: verbal warning or written reprimand.

(e) A name tag, provided by the department, shall be worn on the left shirt-pocket flap while in navy blue uniform. The penalty shall be: verbal warning or written reprimand.

(f) Sleeves on winter shirts shall not be rolled up outside the classroom. The penalty shall be: verbal warning or written reprimand.

(g) Additional clothing may be worn during a training activity if authorized by the instructor.

(9) Training activities, absences.
(a) A cadet shall be absent if he is not physically present in a class or other required department activity for ten (10) minutes or more. A cadet shall be tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A cadet shall give advance notice of an absence if possible. Penalties for an unexcused absence shall be: verbal warning, written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused tardiness shall be: verbal warning or written reprimand.

(b) All absences from Police Corps basic training shall be approved by the director, or Police Corps Director.
(c) If a cadet is absent, excused, or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that training area.

(10) Training activities, breaks. Cadets shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. The penalty shall be: verbal warning or written reprimand.

(11) Training activities, general conduct.
(a) A cadet shall be attentive during training activities. The penalty shall be: verbal warning or written reprimand.
(b) A cadet shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training director or commissioner. The penalty shall be: verbal warning or written reprimand.

(c) A cadet shall not engage in conduct which creates or may create a risk of injury to others during a training session. The penalty shall be: probation, suspension, or expulsion.

(d) A cadet shall complete assignments by the deadline established by the instructor or coordinator. The penalty shall be: verbal warning or written reprimand.

(12) Training activities, dishonesty.
(a) A cadet shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or otherwise falsify an evaluation result. A cadet shall not permit, assist, or facilitate this conduct by another cadet. The penalty shall be: suspension or expulsion.

(b) A cadet shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during Police Corps basic training. A cadet shall not permit, assist, or facilitate this conduct by another cadet. The penalty shall be: written reprimand, loss of privileges, or probation.

(13) Residence hall.
(a) During the Police Corps basic training course, if attending in Madison County, a cadet shall reside in the residence hall designated by the department.

(b) A cadet shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. The penalty shall be: verbal warning, written reprimand, loss of privileges, or probation.

(c) A cadet shall observe "lights out" by 12 midnight. The penalty shall be: verbal warning or written reprimand.

(d) Each cadet shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a cadet shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. The penalty shall be: verbal warning, written reprimand, or loss of privileges.

(e) Doors shall be locked if a room is unoccupied. The penalty shall be: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters shall be prohibited. The penalty shall be: verbal warning, written reprimand, or loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.

(h) A cadet residing at the residence hall shall not:
1. Have any person of the opposite sex in his room, or visit in the room of a cadet of the opposite sex without the permission of the department. The penalty shall be: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have anyone, other than roommate, in his or her room after 9 p.m. The penalty shall be: verbal warning, written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. The
penalty shall be: verbal warning, written reprimand, or loss of privileges.

4. Engage in dangerous, disruptive, immoral, or obscene behavior. The penalty shall be: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 9. Honor Code. (1) The cadet shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As cadets of the Department of Criminal Justice Training, Police Corps basic training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. The penalty shall be: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator, in cooperation with the class shall designate a minimum of one (1) Honor Code representative during the first week of Police Corps basic training. The Honor Code representative may be replaced:

(a) If nonperformance of duties, including conduct violations; or
(b) If the coordinator, in cooperation with the class, determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All cadets shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a cadet with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for the violation shall be solicited from the Honor Code representative.

Section 10. Department's Responsibilities to Sponsoring Agency. In order to keep the sponsoring agency advised of the cadet's progress and performance in Police Corps basic training so that the agency may adequately assess the cadet's ability to perform required duties, the department shall provide the following to the police chief, sheriff, or chief administrator of the cadet's sponsoring agency:

(1) Cadet performance report which shall be completed at six (6) week intervals and shall include cadet conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Disorderly conduct;
(b) Speeding; or
(c) Other behavior that gives rise to a citizen's complaint.

(4) Written notice of any conduct or Honor Code penalty imposed upon the cadet.

(5) Notice when a cadet has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(6) Notice when a cadet has been removed from training pending an initial appearance before the commissioner as defined in Section 11 of this administrative regulation, or when a cadet has been removed from training pending a disciplinary hearing as defined in Section 15(3) of this administrative regulation.

Section 11. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a cadet unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 11 through 17 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall have reasonable grounds to believe the cadet has engaged in the misconduct:

(a) A department instructor may summarily impose a verbal warning or reprimand.
(b) The section supervisor, Police Corps Director, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.
(c) The Police Corps Director, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the cadet the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the cadet with the opportunity to give an explanation.

Section 12. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) When a charge is filed against a cadet, the commissioner or director, in consultation with the Police Corps Director, may remove the cadet from some or all training until the cadet's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the cadet would be dangerous or disruptive if not removed; or
(b) The cadet has been charged with misconduct for which suspension or expulsion is authorized, and the facts demonstrate that suspension or expulsion is the appropriate penalty should the cadet be found guilty of the conduct violation.

(2) A cadet who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 13. Complaint. Anyone having reasonable grounds to believe that a cadet has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor, or Police Corps Director. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 14. Investigation by Police Corps Director or Section Supervisor. (1) If the Police Corps Director or section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the Police Corps Director or section supervisor shall:

(a) Not take any action if none is justified by the evidence;
(b) Impose appropriate summary discipline; or
(c) File, with the legal officer, a written request that charges be
brought against the cadet. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the cadet and witnesses shall be forwarded to the legal officer.

Section 15. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.
(2) The legal officer may make or cause further inquiry into the matter for additional information.
(3) The legal officer shall:
(a) File any charges against the cadet that he believes are justified by the evidence; or
(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.
(4) The charging document shall:
(a) Be in writing;
(b) Particularly describe the alleged misconduct so as to reasonably inform the cadet of the nature of the allegation;
(c) State the time, date, and place the cadet shall make an initial appearance before the commissioner to answer the charges;
(d) Be signed by the legal officer; and
(e) Be served upon the cadet at least forty-eight (48) hours before his initial appearance before the commissioner.

Section 16. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the cadet. If the cadet, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the cadet shall be notified in writing of any action taken.
(2) At the initial appearance before the commissioner:
(a) The legal officer shall:
1. Read the charges to the cadet; and
2. Explain to the cadet:
   a. The charges;
   b. His right to a hearing in accordance with KRS Chapter 13B; and
   c. His right to be represented by legal counsel.
(b) The legal officer shall explain to the cadet the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.
(c) The commissioner shall advise the cadet of the penalty which shall be imposed if the cadet admits the charges or waives a hearing. The commissioner’s recommendation regarding penalty shall be made in consultation with the Police Corps Director.
(d) The cadet shall be requested to answer the charges.
(e) If the cadet chooses to waive his rights and admits the charges or denies the charges but waives a hearing:
   1. He shall be permitted to make a statement of explanation; and
   2. The commissioner shall impose a penalty.
(f) If the cadet denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the cadet within forty-eight (48) hours of the initial appearance before the commissioner.
(g) If the cadet remains silent or refuses to answer the charges, the commissioner, in consultation with the Police Corps Director, may suspend the cadet from training until the cadet answers the charges or the legal officer drops the charges.
(3) The commissioner, in consultation with the Police Corps Director, may remove the cadet from some or all training until the hearing if:
(a) He has reasonable grounds to believe the cadet would be dangerous or disruptive if not removed; or
(b) The cadet is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 17. Hearing. The hearing shall be conducted in accor-

dance with KRS Chapter 13B.

[Section 18. Appeal. (1) A cadet may appeal an order entered by the commissioner which imposes a penalty adverse to the cadet by filing a written notice of appeal to the Secretary of the Justice Cabinet.
(a) The notice of appeal shall state the points on which the appeal is based.
(b) A copy of the order being appealed shall be attached to the notice of appeal.
(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.
(2) The appeal shall be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.
(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.]

JOHN BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 13 2004, at 3 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in Room 211, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2004, five workdays 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 canceled. The 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. Written comment shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephen D. Lynn, Associate General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3137; phone (859) 622-3073, fax (859) 622-3162.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Stephen D. Lynn

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training-Kentucky Police Corps law enforcement basic training course;
(b) The necessity of this administrative regulation: The regulation is necessary to establish clear conduct requirements for Police Corps cadets and to establish the procedures and penalties for those who violate the conduct requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend Kentucky Police Corps law enforcement basic training.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The present amendment changes the administrative regulation to delete Section 18, relating to administrative appeals.
(b) The necessity of the amendment to this administrative regulation: The provisions for appeal of an administrative hearing are contained in KRS 13B.140, 13B.150, and 13B.160. The procedures currently included in Section 18 of this administrative regula-

- 2376 -
tion differ from and exceed the requirements found in the statutes. Pursuant to KRS 13A.120(4), Section 18 is null, void, and unenforceable. This amendment is necessary to delete Section 18 from the regulation.

c) How the amendment conforms to the content of the authorizing statutes: Please see response contained in (1)(c) herein.

d) How the amendment will assist in the effective administration of the statutes: Please see response in (2)(b) herein.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. The approximately 25 members of the Kentucky Police Corps class would be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It is anticipated that police corps cadets should experience little impact due to the amendment. The requirements for administrative appeals have been contained in KRS Chapter 13B for several years.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

a) Initially: No additional state costs.

b) On a continuing basis: No additional state costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds received pursuant to the Police Corps Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish or increase fees.

TIERING: Is tiering applied? No, tiering was not applied. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Juvenile Justice
(Amendment)


RELATES TO: KRS 15A.065, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.067, 15A.160, 200.115, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.067, 15A.160, 15A.210, 15A.305(5), 605.150, 635.095 and 640.120 authorize the Justice Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation incorporates by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures Manual: Admissions", 2004 [2002], is incorporated by reference and includes the following:

200 Classification and Assessment
200.1 Day Treatment Admissions
201 Placement
202 Waiting List
264 Daily Census and Population
266 Administrative Transfers

208 Youth Rights/Orientation
209 Access to Outside Investigative Units
210 Interstate Referrals
211 Interstate Runaways, Escapedees and Absconders
212 Out-of-state Purchase of Care
213 Interstate Travel
214 Interstate Revocations and Case Closure
216 Reception Assessment Center Protocol for Transition
216 Reception Assessment Center Protocol for Transition

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Juvenile Justice, Office of the Commissioner, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, or at any department field office, Monday through Friday, 8 a.m. to 4:30 p.m.

RONALD L. BISHOP, Commissioner
APPROVED BY AGENCY: April 7, 2004
FILED WITH LRC: April 12, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in the conference room at the Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2004, five working 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 this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is made for a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Keith Horn, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Third Floor, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-4306.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Keith Horn

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will amend existing policies and procedures of the Department of Juvenile Justice to improve conditions and services for youth housed in residential treatment facilities and otherwise served by the Department of Juvenile Justice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to incorporate by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation require the Department of Juvenile Justice to provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Department of Juvenile Justice, through this regulation, will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and will have continued to improve conditions for youth housed in residential treatment facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This administrative regulation will amend existing policies and procedures of the Department of Juvenile Justice to improve conditions and services for youth housed in residential treatment facilities and otherwise served by the Department of Juvenile Justice.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary in order to incorporate by reference into regulatory form materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation require the Department of Juvenile Justice to provide community and facility based services and treatment programs for juveniles adjudicated public or youthful offenders or being detained in state operated juvenile detention facilities. The regulation incorporates material used by the Department of Juvenile Justice to provide these mandated services.

(d) How the amendment will assist in the effective administration of the statutes: The Department of Juvenile Justice, through this regulation, will have continued to establish regulatory authority for the current policies and procedures relating to management procedures, support services, benefits to families and children, and youth services, and will have continued to improve conditions for youth housed in residential treatment facilities.

(3) List the number of individual businesses, organizations, or state and local governments affected by this current administrative regulation: Businesses, organizations nor local governments will be affected by this regulation. The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide juvenile service program through the current policies and procedures of the Department of Juvenile Justice.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will result in the provision of better services to the groups impacted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The implementation of this administrative regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.

(b) On a continuing basis: The implementation of this administrative regulation will result in no additional costs. This regulation incorporates material already used by the Department of Juvenile Justice in the provision of statutorily mandated services.

(8) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Appropriations made by the General Assembly for the Department of Juvenile Justice to fulfill its statutory responsibilities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation sets forth the policies and procedures of all offices and facilities of the Department of Juvenile Justice and is effective statewide.

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)
STATUTORY AUTHORITY: KRS 156.070(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

(a) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
(b) Sponsor an annual meeting of its member schools;
(c) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;
(d) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
(e) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;
(f) Advise the Department of Education of all legal action brought against the KHSAA by October 31;
(g) Appoint a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;
(h) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;
(i) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
(j) Permit the Board of Control to assess fines on a member school;
(k) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;
(l) Establish a philosophical statement of principles to use as a guide in an eligibility case;
(m) Conduct field audits of the association's entire membership over a five (5) year period regarding each school's compliance with 20 U.S.C. Section 1581 (Title IX) and submit summary reports including the highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested; and
(n) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);
(o) Conduct all meetings in accordance with KRS 61.805 through 61.850; and
(p) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1)
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.
(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agent.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures and rules for affected schools and districts.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Changes have been made in the regulation to:
1. Consolidate the various reporting times and requirements in the regulation to require a single reporting time for the KHSAA to report to the KBE;
2. Limit the amount of time a board of control member can serve to 2 consecutive terms;
3. Require the conduction of Title IX field audits as a condition of eligibility to serve as the agent for high school athletics; and
4. Change the date on the KHSAA Handbook (which incorporates by reference the KHSAA constitution, bylaws and due process) to fall 2003.
(b) There are also changes in the handbook, primarily in the constitution and bylaws, as follows:
1. A Constitutional amendment relating to the timing for submission of proposals to amend KHSAA bylaws;
2. Bylaw amendments making technical and corrective changes to bylaw 6, transfer rule;
3. Bylaw amendments changing the beginning regular season play dates for swimming to a fixed corresponding playing week to allow for ease of scheduling;
4. Bylaw amendments clarifying the ability of a school to have a celebratory activity following a KHSAA spring event and not conflict with the dead period;
5. Two bylaw amendments revising the coaching requirements to clarify the need to attend annual rules clinics and the responsibility of local districts to reimburse coaches for completion of coaching education training.
(c) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the constitution and bylaws. While they are not required to make changes to the constitution and bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the delegate assembly.
(d) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage high school interscholastic athletics. The regulation designates the KHSAA as that agent, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA constitution, bylaws, and due process to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the bylaws are made annually, ac-
According to the process outlined in the constitution, and reflect input member schools and districts on changes that need to be made to provide a more sound structure of governance.

(d) How the amendment will assist in the effective administration of the statutes. See (c) above.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: 176 school districts.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None
   (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.
   (d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
   (e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.070, 159.100, and 159.030 require the age for compulsory school attendance. KRS 158.060 defines the school day and month and make-up of school days missed. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 158.240 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year on or before May 15 of each year. The calendar shall:
   (a) Establish the opening and closing dates of the school term;
   (b) Establish beginning and ending dates of each school month;
   (c) State the number of days of instruction;
   (d) Establish the minimum length of the instructional day;
   (e) State the instructional time the local board of education requires for kindergarten if in excess of the minimum three (3) hours of instruction;
   (f) State whether the additional instructional time, if any, is planned to be banked to make up for full days which may be missed due to an emergency; and
   (g) Designate days on which schools shall be dismissed.
   (2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.
   (3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.
   (4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.
   (5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.
   (6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

Section 2. (1) The local board of education shall file each adopted school calendar with the Department of Education no later than June 30 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.
   (2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.
   (3) An amended school calendar shall be submitted for approval to the Department of Education no later than June 30 of each year.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.
   (2) The local school district shall be allowed a total of five (5) hours missed each school year that do not have to be made up, and that occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar.
   (3) Except as provided in subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.
   (2) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. A local board of education may request disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency. The request shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. (1) The following shall constitute the activities to be conducted during the instructional school day:
   (a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12," pursuant to 704 KAR 3:303;
   (b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;
   (c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and
   (d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.
   (2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the in-
structural school day, as described in subsection (1)(c) of this section.
(3) Each school shall have available a master schedule that
delineates instructional time periods and noninstructional time peri-
ods for all grade levels served and schedules provided.

Section 7. (1) Daily attendance of pupils in elementary schools
shall be determined by taking attendance one (1) time each day prior
the start of instruction and maintaining a student entry and exit log
at each school.
(2) Daily attendance of pupils in middle and high school shall be
determined by taking attendance by class period and maintaining a
student entry and exit log at each school.
(3) The student entry and exit log shall include the date, student
name, grade or homeroom, time of late arrival, time of early depa-
ture (with the reason for both listed), parent or legal guardian signa-
ture (for elementary students who are signed out) and other infor-
mation required by the local board of education.
(4) Pupils shall be physically present in the school to be counted
in attendance except under the following conditions:
(a) The pupil is a participant in a cocurricular instructional activity
that has been authorized by the local board of education and is a
definite part of the instructional program of the school;
(b) The pupil is a participant in an activity provided in either
KRS 158.240 or 159.035;
(c) The pupil is participating in an off-site virtual high school
class or block. A student may be counted in attendance for a virtual
high school class or block for the year or [of] semester in which the
student initially enrolled in the class or block if the final grade for
that class or block is passing or above;
(d) The pupil's mental or physical condition prevents or renders
inadvisable attendance in a school setting, and the pupil meets the
requirements of KRS 159.030(2). A pupil being served in the
home/hospital program shall receive a minimum of one (1) hour of
instruction two (2) times per five (5) instructional days;
(e) The student has been court ordered to receive educational
services in a setting other than the classroom. A pupil being served
through a court order shall receive a minimum of one (1) hour of
instruction two (2) times per five (5) instructional days; or
(f) The student has an individual education plan (IEP) that
requires less than full-time instructional services.
(5) Even if a pupil's absence or tardy is due to factors beyond the
pupil's control, including inclement weather or failure of the trans-
portation system to operate, the pupil shall be counted absent or
tardy.
(6) The local board of education shall determine by local board
policy what constitutes an excused and an unexcused absence.
A pupil shall not be allowed to make up absences for the
purpose of including make-up activities in the calculation of average
daily attendance.

Section 8. (1) The guidelines in this subsection shall be used to
calculate student attendance for state funding purposes through
June 30, 2005.
(a) A full day of attendance shall be recorded for a pupil who is in
attendance 100 percent of the regularly scheduled school day for
the pupil's grade level.
(b) [29] A tardy shall be recorded for a pupil who is absent less
than thirty-five (35) percent of the regularly scheduled school day for
his grade level.
(c) [33] One-half (1/2) day of attendance shall be recorded for a
pupil who is absent thirty-five (35) to eighty-four (84) percent of the
regularly scheduled school day for the pupil's grade level.
(d) [44] A full-day absence shall be recorded for a pupil who is
absent greater than eighty-four (84) percent of the regularly sched-
uled school day for his grade level.
(e) [66] The percentages described in this section shall apply to
the regularly scheduled school day approved by the local board of
education and shall be applicable to entry level through grade level
twelve (12).
(2) Beginning July 1, 2005, the guidelines in this subsection
shall be used to calculate student attendance for state funding
purposes.
(a) A full day of attendance shall be recorded for a pupil who is
in attendance 100 percent of the regularly-scheduled school day
for his grade level.
(b) A tardy shall be recorded for a pupil who is absent sixty
(60) minutes or less of the regularly-scheduled school day for
his grade level.
(c) The actual percentage of the school day shall be recorded
for attendance of a pupil absent for more than ten (10) minutes of
the regularly-scheduled school day for his grade level.
(d) A full day absence shall be recorded for a pupil who is
absent 100 percent of the regularly-scheduled school day for
his grade level.
(e) The percentages described in this subsection shall apply to
the regularly-scheduled school day approved by the local board of
education and shall be applicable to entry level through grade level
twelve (12).

Section 9. A local board of education may permit an arrange-
ment whereby a pupil has a shortened school day in accordance with
KRS 158.090, or local board of education policy. The time a student
is in attendance shall be included in calculating the district's average
daily attendance.

Section 10. A local board of education may permit an arrange-
ment in which a pupil pursues part of the student's education under
the direction and control of one (1) public school and part of the
student's education under the direction and control of another public or
nonpublic school. The time a student is served by public school shall
be included when calculating the district's average daily attendance.

Section 11. If a local school district, under the provisions of KRS
157.360(6), enrolls a child with a disability in a private school or
agency, the private school or agency shall certify the attendance of
the child to the local school district at the close of each school month.

Section 12. (1) If a local school district enrolls a pupil in the entry
level program who will not be five (5) years of age on or before Octo-
ber 1 of the year of enrollment, the total aggregate days attendance
for the pupil shall not be included in calculating the district's average
daily attendance.
(2) If a local school district enrolls a pupil in the second level of
the primary program who will not be six (6) years of age on or before
October 1 of the year of enrollment, the total aggregate days atten-
dance for the pupil shall not be included in calculating the district's
average daily attendance.
(3) A local school district shall enroll any resident pupil, not
holding a high school diploma, under the age of twenty-one (21)
years of age who wishes to enroll. The days attended after the
student's 21st birthday shall not be included in the calculation of the
district's average daily attendance.

Section 13. The Growth Factor Report for the first two (2) school
months of the school year pursuant to KRS 157.360(8) shall be
submitted to the Department of Education within ten (10) business
days following the last day of the second school month or by [no
later than] November 1 of each year, whichever occurs fir.

Section 14. (1) A copy of the written agreement local boards of
education execute for enrollment of nonresident pupils as provided
by KRS 157.350(4) shall be submitted to the Department of Educa-
tion no later than February 1 of the year prior to the school year to
which it will apply [November 1 of each year]. The written agreement
shall include the specific terms to which the districts have agreed.
A list of the names of all nonresident pupils enrolled in the district cov-
ered by the agreement shall be submitted to the Department of Educa-
tion not later than November 1 of the school year covered by
the agreement.
(2) A change may be made to the original nonresident pupil
agreement up to the close of the school year to include the nonresi-
dent pupils enrolling after the close of the second school month.
The amendment shall be submitted to the Department of Education [with
the local Superintendent's Annual Attendance Report (SAAR)] no
later than June 30 of each year.

Section 15. The superintendent's annual attendance report
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(SAAR) shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17). Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 16. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, student entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 17. (1) The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils until June 30, 2005:

(a) [(13)] E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;
(b) [(21)] E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;
(c) [(31)] E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W06, W07, W13, W16 or W18 during the previous school year;
(d) [(41)] R01 - A pupil received from another homeroom in the same school;
(e) [(51)] R02 - A pupil received from another public school in the same public school district;
(f) [(61)] R03 - A pupil received from a nonpublic school in the same public school district;
(g) [(71)] R04 - A pupil received from a public school in Kentucky outside this public school district;
(h) [(81)] R05 - A pupil received from a nonpublic school in Kentucky outside this public school district;
(i) [(91)] R06 - A pupil enrolling the school after dropping out, discharges or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;
(j) [(461)] R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E01, E02, or E03;
(k) [(111)] R10 - An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;
(l) [(121)] R11 - An expelled pupil received in the current school year, from a regional alternative facility not run by the expelling school district, prior to the completion of the expulsion period;
(m) [(431)] W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W01 shall be R01;
(n) [(441)] W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;
(o) [(151)] W03 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 shall be R03;
(p) [(461)] W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W04 shall be R04, R05, or R07;
(q) [(172)] W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 shall be R04, R05, or R07;
(r) [(169)] W06 - A pupil who is at least sixteen (16), but not yet eighteen (18) years of age and has dropped out. The reentry code to use with W06 shall be R08;
(s) [(491)] W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in KRS 202, Section (11), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, or if the student has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;
(t) [(201)] V08 - A pupil withdrawn due to death;
(u) [(241)] W09 - A pupil who has graduated or completed a 504 plan or an individual education plan prior to the end of the school term or year;
(v) [(221)] W10 - A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be:

1. [(a1)] R06, if the student returns to the expelling local school district in the current school year after the expulsion period has been completed;
2. [(b1)] R10, if the student returns to the expelling local district in the current school year prior to completion of the expulsion period;
3. [(c1)] W11 - A pupil who has been expelled for behavioral reasons and withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be:

1. [(a1)] R06, if the student, after the expulsion period has ended, returns during the current school year;
2. [(b1)] R11, if the student returns in the current school year prior to completion of the expulsion period;
3. [(c1)] W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
4. [(d1)] W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07, W10, W13, W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R06;
5. [(e1)] W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;
6. [(g71)] W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with KRS 5080; and
7. [(g81)] W18 - A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R06.

(2) Beginning July 1, 2005, the following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(a) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;
(b) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;
(c) E03 - A pupil enrolling during the current school year in either a public or nonpublic school, who has withdrawn as a W06, W07, W13, W16 or W18 during the 2004-2005 school year or as a W24 or W28 for previous school years (beginning 2005-2006);
(d) R01 - A pupil received from another homeroom in the same school;
(e) R02 - A pupil received from another public school in the same public school district;
(f) R06 - A pupil reenrolling during the current school year in either a public or nonpublic school, who withdrew as a W06, W07, W13, W16 or W18 during the 2004-2005 school year or as a W24 or W28 for previous school years (beginning 2005-2006);
(g) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;
(h) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;
(i) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W01 shall be R01;
(i) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;
(k) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes a W12 pupil may be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
(l) W17 - An entry level student in the primary program withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:080;
(m) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;
(n) W21 - A pupil transferred to a nonpublic school excluding home schools. The reentry code to use with W21 shall be R21;
(o) W22 - A pupil who has transferred to another public school district and for whom a request for student records has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States;
(p) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;
(q) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;
(r) W25 - A pupil who is at least sixteen (16) years of age and has dropped out of public school;
(s) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate; and
(t) W27 - A student who has withdrawn from school and subsequently received a GED.

Section 18. (1) The following suspension codes shall be used to indicate the suspension status of pupils:
(a) S - Suspension from school for one (1) full day; and
(b) N - Suspension from school for one-half (1/2) day.
(2) Suspension shall be considered an unexcused absence.

Section 19. The following ethnic codes shall be used to indicate the ethnic origin of pupils:
(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;
(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;
(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;
(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and
(6) 6 - Other.

Section 20. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report no later then June 30 of each year.
(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 156.170, and shall be maintained in the student's permanent file. A local school district shall use the Student Record Release Form, or obtain approval from the Department of Education to use an alternative form.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The "Growth Factor Report" file layout, dated August 8, 2002;
(b) The "Superintendent's Annual Attendance Report" file layout, dated August 8, 2002;
(e) The "Student Dropout Questionnaire" dated December, 2002, is incorporated by reference, [and
(d) The Student Record Release Form, dated December, 2002.]
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40301, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY April 9, 2004
FILED WITH LRC: April 12, 2004 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 24, 2004, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working 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 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. 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides guidance to local school districts in the area of pupil attendance reporting.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide school districts with guidance related to pupil attendance reporting and compliance as it relates to KRS 156.070, 156.160, 157.320, 158.060, 158.070, and 158.645.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for compliance with requirements for participation in the fund to Support Education Excellence in Kentucky as stated in KRS 156.350
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for pupil attendance recording and reporting which serves as the basis for the allocation of SEEK funds.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Amendments include:...
1. Changing the growth factor due date from November 1 of each year to 10 business days following the last day of the second school month but not later than November 1 of each year;

2. Changing the due date on the nonresident student agreements from November 1 of the school year covered by the agreement to February 1 of the year prior to the school year covered by the agreement;

3. Removal of withdrawal codes that are obsolete. Addition of a withdrawal code that will make the distinction between home schools and private schools. Addition of withdrawal codes to appropriately report secondary GED recipients and other GED recipients;

4. Changing the calculation of attendance to a full time equivalent mechanism rather than the percentages of the day currently defined.

(b) The necessity of the amendment to this administrative regulation: It is necessary to remove the withdrawal codes that relate to expulsion due to changes in data collection. The new due date for the growth factor report will allow more time to process the data prior to budget requirements. The new due date for the nonresident student agreements will allow time for the entire appeal process prior to the start of the school year covered by the nonresident agreement. Changes to KRS 158.6455 during the 2004 legislative session require the inclusion of codes for GED recipients.

(c) How the amendment conforms to the content of the authorizing statute: This amendment provides specific requirements of the relevant statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will facilitate compliance by districts providing the necessary detailed reporting and compliance requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 176 school districts in the state of Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment should result in earlier data preparation by the local district in the area of attendance reporting (growth factor) as well as more timely consideration of nonresident contract agreements. It will also allow for a more precise calculation of average daily attendance.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no increase in cost to the agency.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Office of the State Fire Marshal
(Amendment)


RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.080, 198B.080, 198B.110, 198B.290, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. EQ 2003-064 filed December 23, 2003 created the Environmental and Public Protection Cabinet. EQ 2004-031 filed January 8, 2004, changes the Department of Housing, Buildings and Construction to Office of Housing, Buildings and Construction and changes commissioner to executive director. This administrative regulation establishes the basic mandatory uniform statewide code provisions relating to construction of one (1) and two (2) family dwellings and townhouses.

Section 1. Definitions. (1) "Board of Housing" or "Board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "Building" is defined by KRS 198B.010(4).

(3) "Commissioner" is defined by KRS 198B.010(9).

(4) "Department" is defined by KRS 198B.010(11).

(5) "Farm" means properly having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) which is qualified by and registered with the property valuation administrator in the county in which the property is located.

(6) "KBC" means the Kentucky Building Code as established in 815 KAR 7:120.

(7) "Manufactured home" is defined by KRS 198B.010(23) and 227 KAR 7:077.

(8) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not manufactured or mobile home.

(9) "Ordinary repair" is defined by KRS 198B.010(19).

(10) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.

(11) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.

(12) "Two (2) family dwelling" means a building containing not more than two (2) family dwelling units which are connected.

Section 2. Mandatory Building Code Requirements for Dwellings. (1) Except as provided in subsection (2) of this section, a single-family dwelling, two (2) family dwelling or townhouse shall not be constructed unless it is in compliance with the International Residential Code, 2000 as amended by this administrative regulation and the 2003 Kentucky Residential Code Supplement.

(2) Exceptions.

(a) Permits, inspections and certificates of occupancy shall not be required for a single-family dwelling unless required by a local ordinance.

(b) All residential occupancies which are not single-family, two-family or townhouses shall comply with the Kentucky Building Code, 2002 as set forth in 815 KAR 7:120.


(4) Effective dates. Plans for single-family or one (1) family dwellings, two (2) family dwellings and townhouses shall be designed and submitted to conform to the Kentucky Residential Code 2002.


(2) The International Residential Code is published by the International Code Council, Inc. 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041-3401.

(3) This material may be inspected, copied, or obtained, sub-
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ject to applicable copyright law, at the Kentucky Office [Department] of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004, at 3:30 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 (five working 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frank L. Dempsey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the building construction requirements for 1 and 2 family dwellings and townhouses.

(b) The necessity of this administrative regulation: This administrative regulation establishes the Kentucky Residential Code as part of the Uniform State Building Code as required pursuant to KRS 1988.050.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This is the portion of the uniform mandatory statewide building code for single family dwellings as authorized by KRS Chapter 1988.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation contains all the enforcement requirements and technical standards for small residential construction.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: No substantive change.

(b) The necessity of the amendment to this administrative regulation: This amendment corrects typographical errors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 1988.050 requires the adoption of a uniform state building code and its continuing review and modification.

(d) How the amendment will assist in the effective administration of the statutes: Will provide corrections to individual business and organizations affected by requirements of the Kentucky Residential Code.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Home-builders and purchasers as well as local governments, but only if they elect to have a building inspection program for single family dwellings.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will correct sections in present code requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not establish fees.

(9) TIERING: Is tiering applied? No, these corrections to the administrative regulation applies equally to all homes, townhouses, duplexes, except manufactured homes and farm homes.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Office of the State Fire Marshal
(Amendment)


RELATES TO:  KRS Chapters 198B, 227
STATUTORY AUTHORITY: KRS 227.300, 250.483
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.300(1) requires the executive director [commissioner] to promulgate an administrative regulation establishing the Kentucky Standards of Safety, which shall provide a reasonable degree of safety for human life against the exigencies of fire and panic and insuring against fire loss. EO 2003-046, filed December 23, 2003, created the Environmental and Public Protection Cabinet. EO 2004-031 filed January 6, 2004, changes the Department of Housing, Buildings and Construction to Office of Housing, Buildings and Construction and changes commissioner to executive director. This administrative regulation establishes the Kentucky Standards of Safety and supplements the Kentucky Building Code, promulgated as 815 KAR 7:120, in matters of fire safety.

Section 1. Definitions. (1) "Accepted" means the authority having jurisdiction has inspected a building or facility, or portion thereof, and the building owner has corrected all deficiencies communicated, in writing, to the owner including the circumstance that no fire code deficiencies were noted during the inspection.

(2) "Distinct fire hazard" means property, or the practice or method of construction or operation, condition, or processes or materials being used which do not afford adequate protection because a fire, explosion or asphyxiation is likely to occur, or because it may provide a ready fuel supply to augment the spread or intensity of a fire or explosion, and which also poses a threat to life or property, including a condition which is likely to unreasonably inhibit escape from danger in the event of fire or explosion.

Section 2. Scope. (1) Title and applicability. This administrative regulation, which includes the material incorporated by reference, shall be known as the Kentucky Standards of Safety and shall be enforceable on all property except single family dwellings.

(2) Authority having jurisdiction. The jurisdiction for the enforcement of this administrative regulation shall be as follows:

(a) State Fire Marshal. The State Fire Marshal shall have primary jurisdiction over all property, except if a local government has established a fire inspection program by ordinance adopting this administrative regulation pursuant to KRS 227.320.

(b) Local fire marshal.

1. Except as provided in subparagraph 2 of this paragraph, the local official designated by ordinance to operate a fire inspection program pursuant to KRS 227.320 shall have primary jurisdiction for the enforcement of all property within the local governmental boundary.

2. The State Fire Marshal shall have exclusive jurisdiction over state-owned property and primary jurisdiction for code compliance...
for health care facilities and other facilities licensed by the Kentuc-
ky Cabinet for Health Services or the Cabinet for Families and
Children.

Section 3. Existing Buildings and Conditions. (1) Buildings and
conditions approved under the Kentucky Building Code which is
incorporated by reference in 615 KAR 7-120.
(a) Min/Maxi standard. The standards for the construction of a
building constructed pursuant to the Kentucky Building Code in
effect at the time of construction and for which there has been
issuance of a lawful certificate of occupancy shall supersede differ-
ent construction standards regarding the requirements for egress fa-
cilities, fire protection and built-in fire protection equipment of this
administrative regulation. Those approved methods of construction
shall not be deemed a distinct fire hazard.
(b) New construction. The design and construction of a new
building to provide egress facilities, fire protection, and built-in fire
protection equipment shall be controlled by the Kentucky Building
Code. An alteration, addition or change to the structure which is
within the scope of the building code shall be made in accordance
with the applicable code.
(c) Change of use. It shall be unlawful to make a change in the
use of a building or portion thereof which has the potential to cre-
gate a greater hazard to the public because of increased structural
or fire loading, or inadequate exits for the number of occupants,
without approval of the authority having jurisdiction.
(2) Buildings and conditions approved under other codes.
(a) Pre-KBC buildings. A building, facility, or portion thereof,
which was constructed and approved prior to the effective dates of
the Kentucky Building Code and this administrative regulation,
shall be maintained as previously permitted. A change to the con-
struction of the building in excess of that required by the codes at
the time of construction shall not be required if the building is used
and maintained as originally approved.
(b) Previous fire code. A building, facility, or portion thereof,
including an alternative, which was inspected and approved or
approved pursuant to the 1996 Kentucky Fire Prevention Code
shall:
1. Be maintained as previously approved or accepted; and
2. Not be required to make a modification or change if it is
maintained and used as previously accepted or approved.
(3) Certificate of use. If the State Fire Marshal or local fire mar-
shal finds an existing building or facility to be in substantial compli-
ance with this administrative regulation, without a violation of an
order of the building official or State Fire Marshal pending, he may
issue a certificate authorizing the legal use of the building or facili-
ty, if the certificate was required at the time of construction. The
use may continue without change if it is used and maintained as
approved.
(4) Hazardous conditions and buildings.
(a) If the State Fire Marshal or local fire marshal determines
that a distinct fire hazard exists, he shall cause the fire hazard to
be remedied so as to render the property reasonably safe.
(b) The State Fire Marshal shall use the standards specified in
this paragraph to order the correction of a distinct fire hazard and
shall act in accordance with the procedures established in KRS
Chapter 227 and Section 5 of this administrative regulation.
1. Except as provided in subparagraphs 2 and 3 of this para-
graph, the following code standards shall be applicable:
a. NFPA Fire Prevention Code (NFPA 1) and the NFPA refer-
ced standards included in NFPA 1 and incorporated by refer-
ence in Section 9(1)(c) of this administrative regulation. The provi-
sions of Section 7-1.3 through 7-1.3.2.2, High Rise Buildings, shall
not be mandatory unless adopted by local ordinance for a particu-
lar jurisdiction;
b. NFPA 101, Life Safety Code and the NFPA referenced stan-
dards included in NFPA 101 and incorporated by reference in
Section 9(1)(c) of this administrative regulation; and
(c. The Kentucky Building Code shall apply to a new building
and to an alteration, addition, or change of use in accordance with
Section 2(1) of this administrative regulation.
2. Other referenced standards. The fire prevention, life safety
and building code standards specified in subparagraph 1 of this
paragraph shall be deemed safe practices and shall be used to
comply with this administrative regulation. A later edition of a code
shall be deemed equivalent to the edition incorporated by refer-
ence in this administrative regulation.
3. Superceding provisions. If a provision of this administrative
regulation establishes regulatory criteria different from the criteria
established in a code specified in subparagraph 1 of this para-
graph, the provisions of this administrative regulation shall super-
cede any provision incorporated by reference.
4. Modification/alternatives/interpretations. If the State Fire
Marshal accepts or approves an alternative to a code provision or
issues an interpretation and the alternative or interpretation is of
general applicability, it shall be published and forwarded to all
known fire inspectors and other persons requesting copies.
(c) A condition, equipment, building, facility or portion thereof
or an alternative designed to meet the intent of a code provision
which has been accepted or approved in accordance with subsec-
tion (2) of this section shall not be considered a distinct fire hazard,
if it is maintained and used as accepted or approved.
(5) Abatement of fire hazards. The abatement of a distinct fire
hazard pursuant to this administrative regulation shall not require
construction measures which would exceed the requirements of
the current edition of the Kentucky Building Code if the building
were being newly constructed.
(6) Maintenance of equipment. All fire suppression and fire
protection equipment, systems, devices and safeguards shall be
maintained in good working order. This administrative regulation
shall not be the basis for removal or abrogation of a fire protection or
safety system or device that exists in a building or facility.
(7) Cooperation with building official. When appropriate, the
State Fire Marshal and the local fire marshal shall coordinate and
cooperate with the building code official having jurisdiction in as-
sessing a building for relative fire safety and to assure that the
proper standards are being applied.

Section 4. Permits. (1) State permits required. A permit shall
be required from the Office of the State Fire Marshal for the fol-
lowing types of installations:
(a) Elevator installations and alterations;
(b) Boiler Installations and alterations; and
(c) Flammable, combustible and hazardous material storage
vessel installations.
(2) Local permits allowed. A permit from a local government
shall not be required unless it is required by local ordinance. An
inspection or permit fee, if applicable, shall be stipulated in the
local adopting legislation.

Section 5. Enforcement of Violations. (1) Notice of deficiency. If
the State Fire Marshal or local fire marshal observes an apparent
violation of a provision of this administrative regulation and the
standards incorporated herein or other codes or ordinances under
his jurisdiction, the State Fire Marshal or local fire marshal shall
prepare a written notice of deficiency, citing the applicable code
provision and specifying a time period in which the required repairs
or improvements shall be completed.
(2) Service of notice. The written notice of deficiency shall be
served upon the owner or his duly authorized agent and upon each
other person responsible for the deficiency.
(3) Failure to correct deficiency. Except if an appeal is in pro-
cess pursuant to Section 6 of this administrative regulation, each
deficiency shall be considered a violation. If a correction required in
the notice of deficiency is not completed within the time specified,
the appropriate legal proceedings to compel compliance may be
requested by the authority having jurisdiction.

An appeal to the State Fire Marshal from a notice of deficiency
issued by an employee or deputy of the State Fire Marshal shall be
in writing and shall be requested prior to the completion date re-
quired by the notice. If the matter is not resolved by agreement of
the affected parties and the State Fire Marshal, other legal action
may be instituted pursuant to KRS Chapter 227.
(2) Local appeals. If a local government adopts an ordinance
for the enforcement of this administrative regulation, the appeal
from a decision of the local fire marshal shall be to the local
authority having jurisdiction as provided by the ordinance.

Section 7. Temporary Occupancies. A change in use, subject to Section 3(1)(c) of this administrative regulation, shall not be prohibited if the building is being used for temporary purposes, in accordance with the requirements of this section:

(1) Time limit. The use of the building shall not exceed a total of thirty (30) days in a calendar year.

(2) Prior notice. The owner of the property shall notify the State Fire Marshal or local fire marshal, in writing, of the proposed new use, stating the nature of the use of the building and the precise dates and times the building is to be occupied.

(3) Inspection. In the notification, the owner shall consent to inspection and an opportunity for the inspection of the building shall be afforded to the State Fire Marshal or local fire marshal, upon request.

(4) Safety requirements. The property owner shall be responsible for maintaining the fire safety of the building and shall comply with the applicable provisions of this administrative regulation for the proposed use, as required by the State Fire Marshal or local fire marshal.


(a) Notification of State Fire Marshal. The owner of the building shall immediately notify the State Fire Marshal of every accident involving personal injury or damage to the apparatus on, about or in connection with a passenger elevator and shall afford the State Fire Marshal every facility for investigating the accident.

(b) Discontinued use of elevator. If an accident involves the failure, breakage, damage or destruction of a part of the apparatus or mechanism, it shall be unlawful to use the device until after an examination by the State Fire Marshal is made and approval of the equipment for continued use is granted.

(c) Removal of damaged parts. If an accident involves personal injury or damage to the apparatus, it shall be unlawful to remove a part of the damaged construction or operating mechanism of the elevator or other equipment from the premises until permission has been granted by the State Fire Marshal.

(2) Fire incident reporting. The fire chief or highest ranking fire department officer shall promptly notify the Office of the State Fire Marshal upon becoming aware of any of the following:

(a) A hazardous materials incident;

(b) A fire or fire-related fatality (including a vehicle or home);

(c) A fire or fire-related injury serious enough to become a fatality;

(d) A fire involving major structural damage in the following buildings:

1. All institutional, educational, state-owned or state-leased and high-hazard occupancies;

2. All business, mercantile and industrial occupancies having a capacity over 100 persons;

3. All assembly occupancies, except churches, having a capacity over 100 persons;

4. Churches with a capacity over 400 persons and more than 6,000 square feet;

5. Any other building more than three (3) stories in height or 20,000 square feet of floor area.

(3) Fire protection systems testing and inspection.

(a) Reporting. Except as provided in paragraph (c) of this subsection, an inspection or test required by Chapter 6, 7 or 8 of the NFPA Fire Prevention Code shall be conducted and reported by a person authorized or certified by the State Fire Marshal's Office.

(b) Inspection and test reports. A required inspection or test shall be recorded on the State Fire Marshal's Report of Inspection. The appropriate pages of the form shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of the inspection.

(c) Reporting exceptions. A portable fire extinguisher or single station smoke detector inspection or test may be inspected and tested by the property owner and their agent. These reports shall not be required to be filed with the State Fire Marshal.

(d) Frequency. Periodic test and inspection of a fire suppression or alarm system shall be performed as follows:

1. Fire detection and alarm systems and all fire suppression systems in buildings other than state licensed hospitals, nursing homes and ambulatory surgical centers shall be inspected and tested for proper operation annually.

2. Fire detection and alarm systems and all fire suppression systems in state licensed hospitals, nursing homes and ambulatory surgical centers shall be inspected and tested quarterly.

3. Systems or components for which the manufacturer recommends more frequent checks shall be performed as described by the manufacturer's instructions.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) NFPA Fire Prevention Code (NFPA 1), 2000 Edition;


(c) The following NFPA referenced standards. If the edition date of the referenced standard referenced in the 2000 NFPA 1 or NFPA 101 is different, these editions shall supersede:

1. Portable Fire Extinguishers-1998;

2. Low-Expansion Foam-1998;

3. 11A, Medium- and High-Expansion Foam Systems-1999;

4. Carbon Dioxide Extinguishing Systems-2000;

5. 12A, Halon 1301 Fire Extinguishing Systems-1997;

6. 13, Installation of Sprinkler Systems-1999;

7. 13D, Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes-1999;

8. Water Tanks for Private Fire Protection-1998;


10. Water-Based Fire Protection Systems-2002;


15. Storage and Handling of Cellulose Nitrate Film-2001;


18. Bulk Oxygen Systems at Consumer Sites-2001;


20. Liquid Hydrogen Systems at Consumer Sites-1999;


22. Acetylene Cylinder Charging Plants-2001;

23. Welding, Cutting, Other Hot Work-1999;


27. Compressed and Liquefied Gases in Portable Containers-1998;


30. Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants-2001;

31. Liquefied Natural Gas (LNG)-2001;

32. Fire and Dust Explosions in Agricultural and Food Products Facilities-1999;

33. Venting of Deflagrations-2002;

34. Explosion Prevention Systems-1997;


37. 70E, Electrical Safety Requirements for Employee Workplaces-2000;

45. 73, Electrical Inspection for Existing Dwellings-2000;
46. 75, Protection of Electronic Computer/Data Processing Equipment-1999;
47. 76, Telecommunications Facilities-2002;
48. 77, Static Electricity-2000;
49. 79, Electrical Standard for Industrial Machinery-1997;
50. 80, Fire Doors and Fire Windows-1999;
51. 80A, Exterior Fire Exposures-2001;
52. 82, Incinerators, Waste and Linen Handling Systems and Equipment-1999;
53. 95, Boiler and Combustion Systems Hazards-2001;
54. 96, Ovens and Furnaces-1999;
55. 96C, Industrial Furnaces Using a Special Processing Atmosphere-1999;
56. 96D, Industrial Furnaces Using Vacuum as an Atmosphere-1999;
57. 88A, Parking Structures-1998;
58. 88B, Repair Garages-1997;
60. 90B, Installation of Warm Air Heating and Air-Conditioning Systems-1999;
61. 91, Exhaust Systems for Air Conveying of Gases, etc.-1999;
62. 92A, Smoke-Control Systems-2000;
63. 92B, Smoke Management Systems in Malls, Atria, Large Areas-2000;
64. 96, Ventilation Control and Fire Protection of Commercial Cooking Operations-2001;
65. 97, Glossary of Terms Relating to Chimneys, Vents, and Heat Producing Appliances-2000;
66. 99, Health Care Facilities-2002;
67. 99B, Hypobaric Facilities-2002;
68. 101A, Alternative Standard Approaches to Life Safety-2001;
69. 101B, Means of Egress-1999;
70. 102, Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures-1995;
71. 105, Smoke-Control Door Assemblies-1999;
72. 110, Emergency and Standby Power Systems-2002;
73. 111, Stored Electrical Energy Emergency and Standby Power Systems-2001;
74. 115, Laser Fire Protection-1999;
75. 120, Coal Preparation Plants-1999;
76. 130, Transit and Passenger Rail Systems-2000;
77. 140, Motion Picture and TV Production Facilities-1999;
78. 150, Fire Safety in Racerack Stables-2000;
79. 160, Flame Effects Before an Audience-2001;
80. 170, Fire Safety Symbols-1999;
81. 203, Roof Coverings and Roof Deck Constructions-2000;
82. 204, Smoke and Heat Venting-2002;
83. 211, Chimneys, Fireplaces, Vents, and Solid Fuel Burning Appliances-2000;
84. 214, Water-Cooling Towers-2000;
85. 220, Types of Building Construction-1995;
86. 221, Fire Walls and Fire Barrier Walls-2000;
87. 230, Storage, Fire Protection of-1999;
88. 232, Records, Protection of-2000;
89. 241, Construction, Alteration, and Demolition Operations-2000;
91. 252, Fire Tests of Door Assemblies-1999;
93. 255, Test of Surface Burning Characteristics of Building Materials-2000;
94. 256, Methods of Fire Tests of Roof Coverings-1998;
95. 257, Fire Tests of Window and Glass Block Assemblies-2000;
98. 260, Cigarette Ignition Resistance of Components of Upholstered Furniture-1998;
99. 261, Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes-1998;
100. 262, Method of Test for Flame Travel and Smoke of Wires and Cables-1999;
101. 265, Evaluating Room Fire Growth Contribution of Textile Wall Coverings-1998;
102. 267, Fire Characteristics of Mattresses and Bedding Assemblies Exposed to Flaming Ignition Source, Method of Test for-1998;
103. 270, Measurement of Smoke Obscuration Using a Conical Radiant Source-2002;
105. 272, Method of Test for Heat and Smoke Release Rates for Upholstered Furniture Components or Composites and Mattresses Using an Oxygen Consumption Calorimeter-1999;
107. 286, Wall and Ceiling Interior Finish-2000;
108. 288, Flammability of Materials in Clearrooms-2001;
109. 288, Floor Floor Door Assemblies, Fire Tests of-2001;
110. 303, Marinas and Boatyards-2000;
111. 306, Control of Gas Hazards on Vessels-2001;
112. 307, Marine Terminals, Piers, and Wharves-2000;
113. 312, Fire Protection of Vessels During Construction, Repair, and Lay-Up-2000;
114. 318, Protection of Clearrooms-2000;
115. 326, Safeguarding Tanks and Containers-1999;
116. 329, Handling Releases of Flammable and Combustible Liquids and Gases-1999;
117. 385, Tank Vehicles for Flammable and Combustible Liquids-1999;
118. 395, Storage of Flammable and Combustible Liquids on Farms and Isolated Sites-1993;
119. 407, Aircraft Fuel Servicing-2001;
120. 409, Aircraft Hangars-2001;
121. 410, Aircraft Maintenance-1999;
122. 415, Airport Terminal Buildings, Fueling Ramp Drainage, Loading Walkways-1997;
123. 418, Heliports-2001;
124. 423, Construction and Protection of Aircraft Engine Test Facilities-1999;
125. 430, Liquid and Solid Oxidizers-2000;
126. 432, Organic Peroxide Formulations, Storage of-1997;
127. 434, Storage of Pesticides-1998;
128. 471, Responding to Hazardous Materials Incidents-2002;
130. 480, Storage, Handling, and Processing of Magnesium-1998;
131. 481, Production, Processing, Handling, and Storage of Titanium-2000;
132. 482, Production, Processing, Handling, and Storage of Zirconium-1996;
133. 485, Lithium Metal-Storage, Handling, Processing, and Use-1999;
134. 490, Storage of Ammonium Nitrate-1998;
135. 496, Purged and Pressurized Enclosures for Electrical Equipment-1998;
136. 497, Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas-1997;
137. 499, Classification of Combustible Dusts and of Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas-1997;
138. 501, Manufactured Housing-2000;
139. 501A, Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities-2000;
140. 505, Powered Industrial Trucks Including Type Designations, Areas of Use, Maintenance, and Operations-1999;
141. 520, Subterranean Spaces-1999;
143. 555, Evaluating Potential for Room Flashover-2000;  
144. 560, Ethylene Oxide for Sterilization and Fumigation,  
Storage, Handling, and Use of-2002;  
145. 651, Aluminum and Aluminum Powders-1998;  
146. 654, Prevention of Fire and Dust Explosions from Manufacturing Combustible Particulate Solids-2000;  
147. 666, Sulfur Fires and Explosions-2001;  
148. 664, Fires and Explosions in Wood Processing and Woodworking Facilities-1998;  
149. 701, Methods of Fire Tests for Flame Propagation of Textiles and Films-1999;  
152. 705, Field Flame Test for Textiles and Films-1997;  
153. 720, Household Carbon Monoxide Warning Equipment-1998;  
154. 750, Water Mist Fire Protection Systems-2000;  
155. 780, Installation of Lightning Protection Systems-2000;  
156. 801, Facilities Handling Radioactive Materials-1998;  
158. 805, Light Water Reactor Electric Generating Plants-2001;  
159. 820, Fire Protection in Wastewater Treatment and Collection Facilities-1999;  
160. 850, Electric Generating Plants-2000;  
161. 851, Hydroelectric Generating Plants-2000;  
162. 853, Stationary Fuel Cell Power Plants-2000;  
163. 901, Standard Classifications for Incident Reporting and Fire Protection Data-2001;  
164. 906, Fire Incident Field Notes-1998;  
165. 909, Protection of Cultural Resources-2001;  
166. 914, Fire Protection in Historic Structures-2001;  
168. 1123, Fireworks Display-2000;  
169. 1124, Fireworks and Pyrotechnic Articles-1998;  
170. 1125, Use of Pyrotechnics before a Proximate Audience-2001;  
171. 1145, Class A Foams - 2000;  
172. 1192, Recreational Vehicles-2002;  
173. 1194, Recreational Vehicle Parks and Campgrounds-2002;  
174. 1600, Disaster/ Emergency Management-2000;  
175. 1852, Open-Circuit Self-Contained Breathing Apparatus (SCBA)-2002;  
176. 1961, Fire Hose-2002;  
177. 1982, Care, Use, and Service Testing of Fire Hose Including Connections and Nozzles-1998;  
178. 1963, Fire Hose Connections-1998;  
179. 1964, Spray Nozzles (Shutoff and Tip)-1998;  
182. 1994, Protective Ensembles for Chemical/Biological Terrorism Incidents-2001; and  
183. 2001, Clean Agent Fire Extinguishing Systems-2000;  
(d) ANSI Standard K61.1/CGA G-2.1, American National Standard Safety Requirements for the Storage and Handling of Anhydrous Ammonia, 1999; and  
(e) Following reports of inspection:  
1. Form FM-FSU, 2003;  
2. Form FM-HM&D, 2003;  
3. Form FM-APTS&H, 2003;  
4. Form FM-B&M, 2003;  
5. Form FM-LB&C, 2003;  
6. Form FM-SB&C, 2003;  
7. Form FM-E, 2003;  
8. Form FM-HC, 2003;  
10. Form FM-ASBYL, 2003;  
11. Form FM-CMP, 2003; and  

(2) This material may be requested, copied, or obtained, subject to applicable copyright law, at the Office [Kentucky Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.]

LAVUANA S. WILCHER, Secretary  
DENNIS J. LANGFORD, Executive Director  
APPROVED BY AGENCY: March 11, 2004  
FILED WITH LRC: April 15, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004, at 4 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by five working 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 canceled. The hearing is open to the public. Anyone 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frank L. Dempsey
(1) Provide a brief summary of:
(a) What this administrative regulation does: Adopts official inspection report forms for the State Fire Marshal’s Office.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to designate the official inspection report forms for the State Fire Marshal’s Office.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 227.260 requires the State Fire Marshal to keep records of all fire inspections and investigations. KRS 227.370 requires a written report of each inspection to be made and kept on file. KRS 227.360 requires the department to promulgate “Standards of Safety” administrative regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation will clarify what forms are to be used by the State Fire Marshal’s Office to report inspection results.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: This amendment updates the forms to be used for State Fire Marshal fire inspections.
(b) The necessity of the amendment to this administrative regulation. The amendment is necessary to update the forms so that they reflect the correct references to NFPA Life Safety Codes and other fire codes and reference standards.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 227.260 requires the State Fire Marshal to keep records of all fire inspections. This amendment simply updates the inspections forms used for recordkeeping.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the use of updated forms which correctly refer to fire code standards.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The State Fire Marshal’s Office and deputized fire departments will be affected by this change.
(g) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation.
regulation, if new, or by the change if it is an amendment: The impact will be minimal. Inspection forms are already used, updated forms will be printed and used as supplies of old forms are depleted.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None.
(a) Initially:
(b) On a continuing basis:
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State Fire Marshal’s Office budget allocation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? Tiering is used. The amendment incorporates 12 different inspection forms. Each form is specific to a certain type of building. The forms contain references relevant to the specific type of building.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:02. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200.

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the office [department], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation established an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.
(2) "APML" means the "Approved Parts or Materials List."
(3) "ASTM" means American Society for Testing Materials.
(4) "Code" is defined by KRS 318.010(11).
(5) "Committee" means the State Plumbing Code Committee.
(6) "Office [Department]" is defined by KRS 318.010(1).
(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.
(8) "Person" is defined by KRS 318.010(9).
(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.
(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the office [department] as being equal to or better than other similarly approved items for inclusion in the APML. The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee’s next scheduled meeting for the purpose of amending the APML. The request shall include:
(a) A description of the part or material for which approval is sought;
(b) Available technical data;
(c) A listing of other authorities which have approved the use of the part or material; and
(d) Any other pertinent information requested by the committee.
(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the office [department].
(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.
(c) Upon approval of a recommendation by the office [department], the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Office [Department] of Housing, Buildings and Construction, Frankfort, Kentucky 40601.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be approved for installation in Kentucky.
(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.
(2)(a) Flushmate water closet tank.
(b) Microhore company. Two (2) quart flush toilets.
(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.
(d) Superseal toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford wastewater Treatment Systems.
(e) IFO Sanitar AB Model 3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Balcock
(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flusheastor/Tank as manufactured by Mansfield Plumbing Products.
(g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle.
(3) Tubular traps with gasket in trap seal.
(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.
(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch or light commercial and household usage.
(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.
(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by A. K. Industries.
(e) Little Giant Pump Company, Drainage Water Removal System, Model WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.
(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.
(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.
(h) Electric Drain System as manufactured by Myers for light commercial and household usage.
(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.
(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed ther-
moplastic rubber gasket.

(c) Deksite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oailey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seam in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brit-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of America, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Asten-Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand or gravel and shall be backfilled by hand and tamp four (4) inches around piping or be surrounded by six (6) inches of sand or gravel.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.


(b) Water heaters, point of use or instantaneous.

1. In-Sink-Eerator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Emerex Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short Shank valve and shall be installed with the product.

3. Vitacclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve and the installation of the relief valve extends into the heat chamber discharge.


5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers: RELI-95GS-3R, RELI-95GS-3RP, RELI-95GS-3RP, RELI-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEO Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.


9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chromomate Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.


13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

14. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

15. Vaillant Corporation gas fired point of use water heater.


17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

18. Austerm Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/200; #110/240; #150/200; #150/240; #180/200; #180/240; #153/200; #153/240; #183/200; #183/240; and #183/480.


21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125SB, 125FX and 3BB. All models to be installed with temperature and pressure relief valves.

22. Controlled Energy Corporations "Powerstream" tankless water heater.

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models.

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valves.

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with temperature and pressure relief valve.

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #185 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FU(C), 2532W(C), 25322FU and 2424W(C) all requiring an approved pressure and temperature relief valve.


31. Qulieside Instantaneous Water Heater Models: QWW6 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees F.

32. Seisco Residential Tankless Water Heaters Model: RA 05, RA 07, RA 09, RA 11, RA 14, RA 18, RA 22 and RA 28. All models shall be equipped with an approved temperature and pressure relief valve.

11. Compression joints. Fail-safe hot and cold water systems.

12. Orlon fittings for acid waste piping systems for above and below ground.


14. Johns Manville Fibre Flex I drain root drain system.

15. Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C356-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

16. Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.
(17) Eljay Aqua-chill water dispensers.
(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.
(19)(a) Delta Faucet Company’s quick-connect fitting known as “grabber” to be used with hot and cold potable water installations above ground only.
(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.
(20) Interceptors.
(a) Town and Country plastic interceptors to be used as a grease trap.
(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.
(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically models Series G, G LO, G M, G LOM, GF, GFE, GAS, GFS, GSS, OS, RSH, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer’s specification and the plumbing code.
(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.
(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.
(21) Plastic Oddities SN (sewer relief vent) clean-out.
(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.
(23) Nonchlorine water treatment to control lime scale and corrosion in buildings superior water conditioners as manufactured by Kemtune, Inc.
(24) Eljer plumbing ware - Elgers ultra one/G water closet.
(25)(a) “Power Flush” and “Quik Jon” as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.
(b) Hydromatic JB-1 System as manufactured by Hydromatic Pumps, Inc.
(26) Exemplar Energy garden solar water heater.
(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.
(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.
(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-St-Croix.
(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.
(29) Clamp-All Corporation Pipe Coupling Systems is approved for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings is included in this approval.
(30) Mission Rubber Company “Band-Seal Specialty Coupling” is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.
(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.
(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.
(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers.
(33)(a) Ferrco Lowflow Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.
(b) Ferrco Proflow Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch.
(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked “meets dimensional specifications of ASTM D-2665”. This pipe has been tested for the tensile strength, durability, etc. of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.
(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.
(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.
(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.
(38) “Flowguard Gold” one (1) step CPVC cement for joining copper, tubular size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.
(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.
(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #3221 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.
(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.
(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion.
(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion.
(42) Plastic Productions PVC “Quick Stub” approved as a solvent weld transition between tubular PVC and schedule 40 PVC.
(43) HubSett In Line Test Coupling: PVC and ABS test coupling produced by HubSett Manufacturing Inc. for testing soil waste and vent systems.
(44) Vliega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint. The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturers installation requirements. Approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only.
(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes. A video camera tape of the existing sewer shall be made to determine proper alignment. After the installation is complete, another tape shall be submitted to ensure that the installation was successful. The sewer shall be tested according to 815 KAR 20:150. The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction.
(46) Envirovac Inc.: Evec Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only.
(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer’s recommendations and shall not be used as a primary means of waste disposal.
(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor.
(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.
(a) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange.
(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casing Company complying with ASTM A74, A888 and C847.
VOLUME 30, NUMBER 11 – MAY 1, 2004

(52) American Pine Lining, Inc. APL 2000. An epoxy lining used in restoring water distribution systems. Subject to the following conditions:
(a) Plumbing construction permit required;
(b) Installation by licensed plumber;
(c) Water quality testing before and after each project; and
(d) Water distribution system treated with APL 2000 must be clearly marked on all exposed piping and water heater: FLAME-LESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM.

LAJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004, at 1 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 (five working 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frank L. Dempsey
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes a list of plumbing parts and materials approved for use in Kentucky.
(b) The necessity of this administrative regulation: To ensure that Kentucky plumbers and property owners have access to the latest materials and products.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation relates to safer operation of plumbing and plumbing fixtures as contemplated by KRS 198B.040 and 318.130.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides standards and guidelines for the materials and practices to be used in water supply and distribution plumbing.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will add 3 new products to the approved parts and materials list and include editorial changes in compliance with EO 2003-064 and EO 2004-031.
(b) The necessity of the amendment to this administrative regulation: To make new plumbing technologies and products available to Kentucky consumers and businesses.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment relates to and promotes the use of safe plumbing fixtures and products.
(d) How the amendment will assist in the effective administration of the statutes: The amendment lists new products and a new material which may be used in Kentucky.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbers, homeowners or property owners may be affected by this amendment.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will provide a greater variety of products and materials for Kentucky property owners to choose from and will allow Kentucky property owners to take advantage of the latest plumbing technologies.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: None
(a) Initially:
(b) On a continuing basis:
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

TIERING: Is tiering applied? Not applicable to plumbing code product/material approval.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing

815 KAR 20:90. Soil, waste and vent systems.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION AND CONFORMITY: KRS 318.130 requires the office [department], after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for soil, waste, and vent systems. This administrative regulation identifies and publishes the manufacturer’s specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system. This amendment is necessary to provide for the addition of future plumbing fixtures without the cost of breaking up concrete, and to adjust the code requirements to reflect the reduction in water usage. (See Sections 6(2) and 7 of this administrative regulation.)

Section 1. Grades and Supports of Horizontal Piping. (1) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot, and shall be supported or anchored in accordance with the manufacturer’s recommendations but shall not exceed ten (10) feet in length.
(2) A stack shall be supported at its base and each pipe shall be rigidly secured.
(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.
(4) Polyvinyl chloride and acrylonitrilebutadiene-styrene schedule forty (40) horizontal piping shall be supported at intervals not to exceed four (4) feet and at the base of each vertical stack and at each trap branch as close to the trap as possible.
(5) Polyethylene pipe and fittings must be continuously supported with a V channel.
(6) A stack shall be rigidly supported at its base and at the floor level.

Section 2. Change in Direction. (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye (1/2), quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.
(2) A single sanitary tee may be used in a vertical stack.
Section 3. Prohibited Fittings. A double hub bend and double hub tee or inverted hub shall not be used on a sewer, soil, or waste line. The drilling and tapping of a house sewer or house drain, soil, waste, or vent pipe, and the use of a saddle hub and band shall be prohibited. A pipe shall be installed without a hub or restriction that reduces the area or capacity of the pipe.

Section 4. Dead Ends. In the installation of a drainage system, a dead end shall not be used without special permission from the office [department].

Section 5. Protection of Material. A pipe passing under or through a wall shall be protected from breakage. A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

Section 6. Materials. (1) Main or branch soil, waste, and vent pipes and fittings within or underneath a building shall be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, galvanized steel, galvanized wrought iron, lead, brass, Types K, L, M, DWV copper, standard high frequency welded tubing produced and labeled as ASTM B-586-73, Types R-K, R-L, R-DWV brass tubing, DWV brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade G or H produced and labeled as ASTM A-312, polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM D-2685-76, D-1784-75 and F-891, coextruded composite PVC pipe produced and labeled ASTM F-1486, acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM D-2681-90, D-1788-73 or F-628, silicon iron or borosilicate.

(2) A main or branch soil waste and vent pipe and fittings underground shall either be hub and spigot extra heavy or service weight cast iron, no-hub service weight cast iron, aluminum, Type K or L copper pipe, Type R-K, R-L brass tubing, lead, silicon iron or borosilicate pipe and fittings or plastics DWV identified in this section. Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter.

Section 7. Size of Soil and Waste Pipe per Fixture Unit on One Stack. (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

<table>
<thead>
<tr>
<th>Pipe Size (Inches)</th>
<th>Maximum Developed Length</th>
<th>Fixture Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1/4</td>
<td>25 ft</td>
<td>1</td>
</tr>
<tr>
<td>1 1/2</td>
<td>60 ft</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>80 ft</td>
<td>6</td>
</tr>
<tr>
<td>2 1/2</td>
<td>100 ft</td>
<td>12</td>
</tr>
<tr>
<td>3</td>
<td>225 ft</td>
<td>36</td>
</tr>
<tr>
<td>4</td>
<td>172</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>342</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>576</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>1600</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>2900</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>4600</td>
<td></td>
</tr>
</tbody>
</table>

(2) A water closet shall be on a minimum of a three (3) inch waste with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch line.

Section 8. Soil, and Vent Stacks. (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.

(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.

(3) The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connected to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. A soil and waste stack or branch shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be either a cast iron, lead, brass, copper, or plastic closet bend. A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building if the soil, waste and vent piping is not extended undiminished through the roof or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture. A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof. A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminal of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected Vents. A fixture trap shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. A crown vent shall not be permitted.
Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed. A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

<table>
<thead>
<tr>
<th>Size of Fixture Drain (In Inches)</th>
<th>Distance Trap to Vent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1/4</td>
<td>2 ft. 6 in.</td>
</tr>
<tr>
<td>1 1/2</td>
<td>3 ft. 6 in.</td>
</tr>
<tr>
<td>2</td>
<td>5 ft.</td>
</tr>
<tr>
<td>3</td>
<td>6 ft.</td>
</tr>
<tr>
<td>4</td>
<td>10 ft.</td>
</tr>
</tbody>
</table>

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. (1) All main vents or vent stacks shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture.

(2)(a) Except as provided in paragraph (b) of this subsection, if it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base.

(b) If the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base.

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

<table>
<thead>
<tr>
<th>Maximum Permissible Lengths of Vents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pipe Size (In Inches)</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td>1 1/4</td>
</tr>
<tr>
<td>1 1/2</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>2 1/2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system; or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

Section 22. Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section 23. Vent Pipes Grades and Connections. A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity. If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil, or vent.

Section 24. Vents not Required; Backwater Traps. Subsoil Catch Basin and Basement Floor Drains. A vent shall not be required on a backwater trap, subsoil catch basin trap or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack; nor farther than twenty (20) feet. A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section 25. When Common Vent Permissible. If two (2) water closets, two (2) lavatories or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition, or directly adjacent to each other within the prescribed distance as set forth in Section 19 of this administrative regulation measured along the center line of the flow line of water, the fixtures may have a common soil or waste pipe and a common vent. It shall be vented in accordance with this administrative regulation.

Section 26. Floor Drain Individual Vent not Required. A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the prescribed distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack. An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section 27. A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility which discharges into an opem sewer and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section 28. House Drain Material. A house drain shall be either extra heavy cast iron, service weight cast iron, brass Type (K) or (L) copper, lead, ABS or PVC plastic, or duriron.

Section 29. Indirect Waste Connections. Waste pipe from a refrigerator drain or other receptacle where food is stored or waste water from a water cooled compressor, shall connect indirectly with the house drain, soil or waste pipe. The drain shall be vented to the outside air. The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation. The connection shall not be located in an inaccessible or unventilated area.

Section 30. Bar and Soda Fountain Wastes. (1) A bar and soda fountain waste, sink or receptacle shall have a one and one-half (1 1/2) inch P trap and branches. The main shall not be less than two (2) inches. The fresh air pipe shall not be less than one and one-half (1 1/2) inches. The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building.

(2) A floor receptacle or floor sink may be installed flush with the finished floor provided it has a full grate with an attached funnel to receive indirect waste [food storage compartment drain shall be indirectly connected through a trapped receptacle whose upper edge is raised at least one (1) inch above the finished floor line].

(3) A floor receptacle or floor sink installed specifically for the indirect wastes from a tilting brailing pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptacle is equipped with a proper strainer and receives no other indirect waste.

Section 31. Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

Section 32. Refrigerator Wastes. A refrigerator waste pipe shall not be less than one and one-half (1 1/2) inches for one (1) to three (3) openings, and at least two (2) inches for four (4) to eight (8) openings. Each opening shall be trapped. The waste piping shall
be equipped with sufficient cleanouts to allow for thorough cleaning.

Section 33. Overflow Pipes. Waste from a water supply tank or exhaust from a water heater shall not be directly connected to a house drain, soil, or waste pipe. The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section 34. Acid and Chemical Wastes. A corrosive liquid shall not be permitted to discharge into the soil, waste or sewer system unless otherwise permitted by this administrative regulation. The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section 35. Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if a pit has a ventilated cover.

(3) If under certain conditions a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch exceeding more than the distance specified in the table in Section 19 of this administrative regulation from the main shall be revented and the distance shall be measured from the center of the main to the center of the vertical riser.

(6) A fixture connection shall rise vertically to a height so that the floor shall not be lower than twelve (12) inches from the bottom of the sink and two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 36. Acid Waste Piping. Underground piping for acid wastes shall be extra-heavy galvanized vitrified pipe, silicon iron, lead, polyethylene pipe and fittings, produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, polypropylene pipe and fittings produced and labeled as ASTM F-1412, or other materials approved by the office [department]. Piping for acid wastes and vents above ground shall be of silicon iron, lead, borosilicate, or polyethylene pipe produced and labeled as ASTM D-1204-62T, polypropylene pipe produced and labeled as ASTM D-4101-85, or filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. (1) Except as provided in subsection (2) of this section, a flat or wet vent serving a plumbing fixture shall be constructed with special permission from the office [department] if a plumbing system is being remodeled or if an addition is added to an original system.

(2) A flat vent in new construction may be allowed in a commercial building if the design of the building prohibits the type of venting required by this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

(2) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap

and venting provisions of the State Plumbing Code.

LAJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004, at 1:30 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 (five working 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 canceled. The hearing is open to the public. Any person who wishes to be heard shall 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-8385, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frank L. Dempsey
(1) Provide a brief summary of:
(a) Why this administrative regulation does: Identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in each type of plumbing system.
(b) The necessity of this administrative regulation: To ensure that Kentucky plumbers and property owners use acceptable methods and materials in the design of soil, waste and vent systems.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation allows another method of installation of a floor receptor or floor sink as contemplated by KRS 1988.040 and 318.130.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides another method of installation.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will allow another method of installation of a floor receptor or floor sink of bar and soda fountain waste and include editorial changes in compliance with EO 2003-064 and EO 2004-031.
(b) The necessity of the amendment to this administrative regulation: To make new plumbing technologies and products available to Kentucky consumers and businesses.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment relates to and promotes the use of safe plumbing installations.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow a new installation regarding bar and soda fountain wastes.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbers, homeowners or property may be affected by this amendment.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will allow another method of installation for Kentucky property owners and plumbers to choose from.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: None
   (a) Initially:
   (b) On a continuing basis:
(6) What is the source of the funding to be used for the implementa-
   tion and enforcement of this administrative regulation: Not
   applicable.
(7) Provide an assessment of whether an increase in fees or funding
   will be necessary to implement this administrative regulation,
   if new, or by the change if it is an amendment: No funding is
   necessary.
(8) State whether or not this administrative regulation estab-
   lishes any fees or directly or indirectly increases any fees: No fees
   are established or increased.
(9) TIERING: Is tiering applied? Not applicable to plumbing
   code installation methods.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)

815 KAR 20:110. Traps and clean-outs.

RELATES TO: KRS 318.010, 318.130, 318.150
STATUTORY AUTHORITY: KRS 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130
requires the department, through the State Plumbing Code Com-
mittee, to promulgate an administrative regulation establishing a
State Plumbing Code. This administrative regulation establishes
requirements for traps and clean-outs to prevent harmful gases
and odors from entering a building or home that is served by a
plumbing system and identifies the manufacturer's specification
number of the material accepted in an installation.

Section 1. Traps, Kind and Minimum Size. (1) A Trap shall be
self-cleaning.
(2) A trap for a bathtub, lavatory, sink or other similar fixture
shall either be tubular brass, tubular ABS or PVC produced and
labeled as ASTM F-409, cast brass, cast iron, lead or schedule 40
PVC (polyvinyl chloride) or ABS (acrylonitrile-butadiene-styrene)
trap.
(3) A tubular or schedule 40 PVC or ABS p-trap shall be either
the union joint or solvent welded type.
(4) A tubular brass trap shall be seventeen (17) gauge.
(5) A tubular brass, tubular PVC or ABS trap shall not be
installed below the finished floor serving a fixture.
(6) A trap shall have a full bore, smooth interior waywater.
(7) The threads in a cast brass or cast iron trap shall be tapped
out of solid metal.
(8) A lead trap shall be extra heavy.

Section 2. Traps, Prohibited. A trap which depends upon the
action of a movable part or concealed interior partition for its seal
shall not be used.

Section 3. Traps, Where Required. (1) A fixture shall be separ-
rately trapped by a water-seal trap placed as near as possible to
the fixture but not to exceed ten (10) inches from the bottom of the
 fixture to the dip of the seal.
(2) Waste from a bathtub or other fixture shall not discharge
into a water closet bend.
(3) A fixture shall not be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal
not less than two (2) inches or more than four (4) inches.

Section 5. Trap Clean-outs. A trap clean-out shall be optional.

Section 6. Trap Levels and Protection. A trap shall be set true
with respect to its water seal and shall be protected from frost and
evaporation. Trap primers shall be required on all floor drains and
open receptacles in commercial - mechanical/boiler rooms and on
open receptacles that receive the discharge from a temperature
and pressure relief device discharge only.

Section 7. Pipe Clean-outs. (1) The bodies of clean-out ferrules
shall be made in a standard pipe size, conforming in thickness to
that of the pipe and fittings and shall not extend less than one-
quarter (1/4) inch above the hub in which it is placed.
(2) The clean-out cap or plug shall be yellow-brass, PVC, or
ABS [heavy red-brass] not less than one-eighth (1/8) inch thick and
shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, Whore Required. In a building
served by a stack over forty-five (45) feet in height, a clean-out
shall be provided at the base of each vertical waste or soil stack.
There shall be at least one (1) clean-out in the building drain with a
full-size branch inside the wall or outside the building at a point not
to exceed two (2) feet from the foundation wall. If located outside
the building, the clean-out shall be extended to the finished grade
for accessibility. A clean-out shall be of the same nominal size as
the pipe it serves up to four (4) inches and shall not be less than
four (4) inches for larger pipe.

Section 9. Manholes. An underground clean-out in a building,
except if a clean-out is flush with the floor or wall, shall be made
accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). A floor or wall connection
of a fixture trap, whether bolted or screwed to the floor or wall, shall
be regarded as a clean-out with the exception of the clean-out
where the house drain enters a building.

Section 11. Grease Traps. (1) If a grease trap is installed, it
shall be:
(a) Placed as near to the fixture it serves as practicable; and
(b) Approved by the department.
(2) A grease trap used inside a building shall:
(a) Have a sealed cover; and
(b) Be properly vented.
(3) A grease trap shall be installed for a restaurant, food serv-
  ice establishment or other business establishment as required by:
(a) Applicable administrative regulations promulgated by the
   Department of Housing, Buildings and Construction; or
(b) Municipal ordinance.
(4) If a food establishment uses a private sewage system, a
   grease trap shall be installed as required by 902 KAR 10:085.

Section 12. Sand Traps. A sand trap shall be readily accessi-
ble and shall meet the requirements established in the applicable
administrative regulations promulgated by the Department of
Housing, Buildings and Construction.

Section 13. Basement Floor Drains. (1) A basement floor drain
shall:
(a) Connect to a trap;
(b) Be readily accessible for cleaning; and
(c) Be of sufficient size to serve the purpose intended.
(2) If a drain is subject to back flow or back pressure, the drain
shall be equipped with a backwater valve approved by administra-
tive regulation of the Department of Housing, Buildings and Con-
struction.

Section 14. Back Water Valves. A back water valve shall be:
(1) Of noncorrosive material; and
(2) Constructed to insure a positive mechanical seal except if
   discharging waste.

Section 15. Residential Utility Room Floor Drains. A two (2)
inch floor drain with an individual waste and vent may be installed
in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. A
kitchen sink unit or fixture with more than one (1) unit may be con-
ected with a continuous-waste, if a directional flow fitting is used.
Continuous-waste shall be either seventeen (17) gauge tubular
brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

LAUJANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 16, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004, at 2 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucy. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 (five working 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5065, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frank L. Dempsey
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes requirements for traps and clean-outs to prevent harmful gases and odors from entering a building or home that is served by a plumbing system and identifies the manufacturer’s specification number of the material accepted in an installation.
(b) The necessity of this administrative regulation: To ensure that Kentucky plumbers and property owners have access to the latest materials and products being installed plumbing systems.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation relates to other operation of plumbing and plumbing fixtures as contemplated by KRS 198B.040 and 318.130.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides standards and guidelines for the materials and practices to be used in installing traps and clean-outs.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment replaces a material that is no longer available and includes editorial changes in compliance with EO 2003-064 and EO 2004-031.
(b) The necessity of the amendment to this administrative regulation: To replace a material that is no longer available to Kentucky consumers and businesses.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment relates to and promotes the use of safe plumbing materials.
(d) How the amendment will assist in the effective administration of the statutes: The amendment lists a new material which may be used in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbers, homeowners or property owners may be affected by this amendment.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will provide a replacement for material that is no longer available.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None
(a) Initially:
(b) On a continuing basis:
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.
(9) TIERING: Is tiering applied? Not applicable to plumbing code product/material approval.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(1) Section 1. General Requirements. (1) In a building accommodating males and females it shall be presumed that the occupants will be equally divided between males and females, unless otherwise denoted.
(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be that denoted in the Kentucky Building Code, incorporated by reference in 815 KAR 20:191.
(3) All types of buildings shall be provided with toilet rooms on each level or floor, unless the department determines that:
(a) Separate facilities on each level or floor are unnecessary; and
(b) Toilet rooms on every other level or floor shall be sufficient.
(4) Toilet rooms for males and females shall be clearly marked.

Section 2. Toilet Floor Construction Requirements. (1) Floors in toilet rooms providing facilities for use by the general public or employees shall be constructed of nonabsorbent materials.
(2) If a wood floor is used, the wood floor shall be covered by other nonabsorbent materials.
(3) If two (2) or more fixtures that receive human waste are installed, the toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 3. Facilities for Stages. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.
(2) A drinking fountain shall be provided in the stage and auditorium area.

Section 4. Theaters, Assembly Halls and Similar Occupancies. Separate toilet rooms for males and females shall be provided as indicated in Sections 1, 2, and 3 of this administrative regulation, and as follows:
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(1) Water closets and urinals for males.
(a) Water closets for males shall be installed in the following proportions:
1. One (1) water closet for each 100 males;
2. Two (2) water closets for 101 to 200 males; and
3. Three (3) water closets for 201 to 400 males; and
4. If over 400 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof.
(b) Urinals for males shall be installed in the following proportions:
1. One (1) urinal for eleven (11) to 100 males;
2. Two (2) urinals for 101 to 300; and
3. Three (3) urinals for 301 to 600; and
4. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.
(2) Water closets for females. Water closets for females shall be installed in the following proportions:
(a) One (1) water closet for each fifty (50) females;
(b) Two (2) water closets for fifty-one (51) to 100 females;
(c) Three (3) water closets for 101 to 150 females;
(d) Four (4) water closets for 151 to 200 females; and
(e) If over 200 females, four (4) water closets plus one (1) additional water closet for each additional 150 females or fraction thereof.
(3) Lavatories. Lavatories shall be installed in the following proportions:
(a) One (1) lavatory for up to 100 males or females;
(b) Two (2) lavatories for 101 to 200;
(c) Three (3) lavatories for 201 to 400;
(d) Four (4) lavatories for 401 to 750; and
(e) If over 750 persons, four (4) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof.
(4) Sinks. There shall be one (1) service sink or slop sink on each floor.
(5) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.
(6) Drinking fountain. A drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.
(7) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 5. Libraries, Museums and Art Galleries. Separate toilet facilities for males and females shall be provided as indicated in Sections 1, 2, and 3 of this administrative regulation, and as follows:
(1) There shall be one (1) water closet and one (1) lavatory for each 100 females or fraction thereof.
(2) Except as provided in subsection (7) of this section, there shall be one (1) water closet and one (1) lavatory for each 200 males or fraction thereof.
(3) There shall be:
(a) One (1) urinal for eleven (11) to 200 males;
(b) Two (2) urinals for 201 to 400;
(c) Three (3) urinals for 401 to 600; and
(d) If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.
(4) There shall be one (1) service sink or slop sink on each floor.
(5) A drinking fountain shall be provided for each 500 persons or fraction thereof.
(6) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person for each fifteen (15) square feet of area.
(7) Urinals may be substituted for water closets for males if:
(a) The substituted urinals do not exceed one-third (1/3) of the required total number of water closets; and
(b) The minimum number of urinals is installed.
(8) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. School Buildings. A school building shall be in compliance with the requirements established in 702 KAR 4:170 and this section.
(1) Drinking fountains.
(a) A drinking fountain shall be provided on each floor and wing of a building. One (1) additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof.
(b) The fountains shall be equipped with:
1. A protective cowl; and
2. The orifice, which shall be one (1) inch above the overflow rim of the fountain.
(2) Elementary through secondary level school buildings shall be provided with the following:
(a) Water closets for males shall be installed in the following proportions:
1. One (1) water closet for up to twenty-five (25) pupils;
2. Two (2) water closets for twenty-six (26) to 100 pupils; and
3. If over 100 pupils, two (2) water closets plus one (1) additional water closet for each 100 pupils or fraction thereof.
(b) Urinals for males shall be installed in the following proportions:
1. One (1) urinal for up to twenty-five (25) pupils;
2. Two (2) urinals for twenty-six (26) to fifty (50) pupils;
3. Four (4) urinals for fifty-one (51) to 100 pupils;
4. Six (6) urinals for 101 to 200 pupils;
5. Eight (8) urinals for 201 to 300 pupils;
6. Ten (10) urinals for 301 to 400 pupils;
7. Twelve (12) urinals for 401 to 500 pupils; and
8. If over 500 pupils, twelve (12) urinals plus one (1) additional urinal for each fifty (50) pupils or fraction thereof in excess of 500.
(c) Water closets for females shall be installed in the following proportions:
1. Two (2) water closets for up to twenty-five (25) pupils;
2. Three (3) water closets for twenty-six (26) to fifty (50) pupils;
3. Six (6) water closets for fifty-one (51) to 100 pupils;
4. Eight (8) water closets for 101 to 200 pupils;
5. Ten (10) water closets for 201 to 300 pupils;
6. Twelve (12) water closets for 301 to 400 pupils;
7. Fourteen (14) water closets for 401 to 500 pupils; and
8. If over 500 pupils, fourteen (14) water closets plus one (1) additional water closet for each forty (40) pupils or fraction thereof in excess of 500.
(d) Lavatories for male and female pupils shall be installed in the following proportions:
1. One (1) lavatory for each twenty-five (25) pupils or fraction thereof; and
2. If over fifty (50) pupils, two (2) lavatories plus one (1) additional lavatory for each fifty (50) pupils or fraction thereof.
3. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin, if provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.
(3) One (1) service sink or slop sink shall be installed on each floor of a building.
(4) If detached relocatable classrooms are used, sanitary facilities shall not be required, if:
(a) The classroom is within a distance not to exceed thirty-five (35) feet from the main structure; and
(b) There are sufficient fixtures in the main structure to serve the entire capacity of the school, including the relocatable classrooms.
(5) Water closets in a school building shall be of the elongated bowl type with a split open front seat.

Section 7. Schools of Higher Education and Similar Educational Facilities. (1) Except as provided in paragraph (b) of this subsection, in a school of higher education or a similar education facility, there shall be installed:
1. One (1) water closet for each fifty (50) males or one (1) water closet for each twenty-five (25) females or fraction thereof.
2. One (1) lavatory for each fifty (50) males or females or fraction thereof.
3. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof, and
4. One (1) urinal for each thirty (30) males or fraction thereof.
Section 8. Public Garages and Service Stations. (1) Separate toilet rooms shall be provided with at least:
(a) A water closet and lavatory for females; and
(b) A water closet, lavatory and urinal for males.
(2) Water closets shall be of the elongated bowl type with a split open front seat.

Section 9. Churches. (1) Sanitary facilities shall be provided in a church as follows:
(a) One (1) drinking fountain for each 400 persons or fraction thereof;
(b) One (1) water closet for each 150 females or fraction thereof;
(c) One (1) water closet for each 300 males or fraction thereof;
(d) One (1) urinal for each 150 males or fraction thereof;
(e) One (1) lavatory for each 150 persons or fraction thereof; and
(f) One (1) lavatory for each twenty-five (25) males or fraction thereof.

(2) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 10. Transient Facilities. A transient facility shall be in compliance with the requirements established in 902 KAR 10:010 and this section.
(1) A hotel or motel with private rooms shall have one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.
(2) In the public and service areas, there shall be:
(a) One (1) water closet for each twenty-five (25) males or fraction thereof;
(b) One (1) water closet for each fifteen (15) females or fraction thereof;
(c) One (1) lavatory for each twenty-five (25) males or females or fraction thereof;
(d) One (1) urinal for each eleven (11) to 100 males plus one (1) additional urinal for each additional fifty (50) males or fraction thereof;
(e) One (1) bathtub or shower, if needed, for each ten (10) males or females or fraction thereof;
(f) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof on each floor; and
(g) One (1) service sink or slop sink on each floor.
(3) In residential-type buildings, there shall be one (1) water closet, one (1) lavatory and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.
(4) In rooming houses with private baths, there shall be one (1) water closet, one (1) lavatory and one (1) bathtub or shower per room.
(5) In rooming houses without private baths, there shall be:
(a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) males or fraction thereof;
(b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) females or fraction thereof;
(c) One (1) urinal for eleven (11) to 100 males and one (1) for each additional fifty (50) males or fraction thereof over 100;
(d) One (1) lavatory for each ten (10) males or females or fraction thereof; and
(e) One (1) bathtub or shower for each ten (10) males or females or fraction thereof.

Section 11. Dormitories: School, Labor or Institutional. In a dormitory, there shall be installed the fixtures required by this section.
(1) Water closets, there shall be:
(a) One (1) water closet for up to ten (10) males with one (1) additional water closet for each additional twenty-five (25) males or fraction thereof; and
(b) One (1) water closet for up to eight (8) females with one (1) additional water closet for each additional twenty (20) females or fraction thereof.
(2) Urinals.
(a) There shall be one (1) urinal for each twenty-five (25) males or fraction thereof, and, if there is over 150 males, one (1) additional urinal for each additional fifty (50) males or fraction thereof.
(b) If urinals are provided for women, the same number shall be provided for women as for men.
(c) If urinals are provided, a urinal may be substituted for a water closet, not to exceed one-third (1/3) of the required total number of water closets.
(d) Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.
(3) Lavatories.
(a) There shall be one (1) lavatory for one (1) to twelve (12) persons, with an additional one (1) lavatory for each twenty (20) males and each fifteen (15) females.
(b) Separate dental lavatories shall be provided in community toilet rooms at a ratio of one (1) dental lavatory to each fifty (50) persons.
(4) Additional fixtures. There shall be:
(a) One (1) bathtub or shower for each eight (8) persons. If there is over 150 persons, there shall be one (1) additional fixture for each twenty (20) persons. For women's dormitories, there shall be installed additional bathtubs at the ratio of one (1) for each thirty (30) women;
(b) One (1) drinking fountain for each seventy-five (75) persons;
(c) One (1) laundry tray or clothes washer for each fifty (50) persons; and
(d) One (1) service sink or slop sink for each 100 persons.
(5) If the dormitory is located in a youth camp, the requirements of 902 KAR 10:040 shall apply in addition to the requirements established in this section.

Section 12. Hospitals, Nursing Homes and Institutions. A hospital, nursing home, or institution shall comply with the requirements established in 902 KAR 20:031, 902 KAR 20:046, 902 KAR 20:056, 902 KAR 9:010, and this section. Sanitary facilities shall be provided on each floor level and shall conform to the following:
(1) Hospitals.
(a) Wards. There shall be:
1. One (1) water closet for each ten (10) patients;
2. One (1) lavatory for each ten (10) patients;
3. One (1) tub or shower for each fifteen (15) patients; and
4. One (1) drinking fountain for each 100 patients.
(b) Individual rooms. There shall be one (1) water closet, one (1) lavatory and one (1) tub or shower.
(c) Waiting rooms. There shall be one (1) water closet and one (1) lavatory.
(2) Nursing homes and institutions (other than penal). There shall be:
(a) One (1) water closet for each twenty-five (25) males or fraction thereof;
(b) One (1) water closet for each twenty (20) females or fraction thereof;
(c) One (1) lavatory for each ten (10) persons or fraction thereof;
(d) One (1) urinal for each fifty (50) males;
(e) One (1) tub or shower for each fifteen (15) persons or fraction thereof;
(f) One (1) drinking fountain on each floor; and
(g) One (1) service sink or slop sink on each floor.
(3) Institutions, penal.
(a) Cell. There shall be:
1. One (1) prison type water closet; and
2. One (1) prison type lavatory.
(b) Day rooms and dormitories.
1. There shall be:
a. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof;
b. One (1) lavatory for each twelve (12) inmates or fraction thereof.
thereof;
c. One (1) shower for each fifteen (15) inmates or fraction thereof;
  d. One (1) drinking fountain per floor; and
e. One (1) service sink or slop sink per floor.
2. One (1) urinal may be substituted for each water closet if the
number of water closets is not reduced to less than one-half (1/2)
the number required.
(c) Toilet facilities for employees shall be located in separate
rooms from those in which fixtures for the use of inmates or pa-
tients are located.
(d) There shall be one (1) drinking fountain on each floor.
(e) There shall be one (1) service sink or slop sink per floor.

Section 13. Workshops, Factories, Mercantile and Office
Buildings. Separate toilet facilities shall be provided for males and
females on each floor unless otherwise denoted.
(1) Workshops and factories: Sanitary facilities shall conform to
the following:
(a) There shall be:
  1. One (1) water closet for each twenty-five (25) males or frac-
     tion thereof, up to 100;
  2. One (1) lavatory for each twenty-five (25) males or fraction
     thereof, up to 100;
  3. One (1) urinal for eleven (11) to fifty (50) employees;
  4. Two (2) urinals for fifty-one (51) to 100 employees;
  5. One (1) lavatory for each twenty-five (25) females or fraction
     thereof, up to 100;
  6. One (1) water closet for each fifteen (15) females or fraction
     thereof up to 100;
  7. If in excess of 100, there shall be:
     a. One (1) additional water closet for each thirty (30) males and
each thirty (30) females or fraction thereof;
     b. One (1) additional lavatory for each additional fifty (50)
     males and females or fraction thereof;
     c. One (1) additional urinal for each 100 males or fraction
        thereof;
  8. One (1) shower for each fifteen (15) persons exposed to
     skin contamination from irritating, infectious or poisonous ma-
     terials;
  9. One (1) drinking fountain on each floor for each fifty (50)
     employees. If there is more than 100 employees, there shall be an
     additional drinking fountain on each floor for each additional sev-
     enty-five (75) persons; and
  10. One (1) service sink or slop sink per floor.
(b) Individual sinks or wash troughs may be used in lieu of
lavatories. Twenty-four (24) inches of sink or trough, if provided
with water, or eighteen (18) inches of circular basin shall be
deemed the equivalent of one (1) lavatory.
(2) Mercantile.
(a) Employees.
1. Except as provided in subparagraph 2 of this paragraph,
   sanitary facilities within each store shall be provided for employ-
   ees. If more than five (5) persons are employed, separate facilities
   for each sex shall be provided.
2. For a store containing no more than 3,000 square feet of
total gross floor area, employee facilities shall not be required if
adequate interior facilities are provided within a centralized toilet
room area or areas having a travel distance of no more than 500
feet.
(b) Customers.
1. Sanitary facilities shall be provided for customers if the
   building contains 5,000 square feet or more.
2. In a mall or shopping center, the required facilities, based on
   one (1) person per 100 square feet of total area, shall be installed
   in individual stores or in a central toilet room area or areas, if:
   a. The distance from the main entrance of a store does not
      exceed 500 feet; and
   b. The toilet room area is accessible to physically disabled
      persons.
(c) Sanitary facilities shall be provided as stated in this section
   and there shall be:
  1. One (1) water closet for one (1) to 100 persons;
  2. Two (2) water closets for 101 to 200 persons;
  3. Three (3) water closets or 201 to 400 persons;
  4. One (1) water closet for each 500 males, or 300 females, in
     excess of 400;
  5. One (1) urinal for one (1) to 200 males;
  6. Two (2) urinals for 201 to 400 males;
  7. Three (3) urinals for 401 to 600 males;
  8. One (1) urinal for each 300 males, or fraction thereof, over
     600;
  9. One (1) lavatory for one (1) to 200 persons;
  10. Two (2) lavatories for 201 to 400 persons;
  11. Three (3) lavatories for 401 to 700 persons;
  12. One (1) lavatory for each 500 persons, or fraction thereof,
      in excess of 700;
  13. One (1) drinking fountain on each floor for each 500 per-
      sons or fraction thereof; and
  14. One (1) service sink or slop sink per floor.
(3) Office buildings.
(a) Employees.
1. Except as provided in subparagraph 2 of this paragraph,
   sanitary facilities within office buildings shall be provided for em-
   ployees. If more than five (5) persons are employed, separate
   facilities for each sex shall be provided.
2. For an office building containing no more than 3,000 square
feet of total gross floor area, employee facilities shall not be re-
quired if adequate interior facilities are provided within a central-
ized toilet room area or areas having a travel distance of no more
than 500 feet.
(b) Customers.
1. Sanitary facilities shall be provided for customers if the office
   building or space contains 5,000 square feet or more.
2. In an office building, the required facilities, based on one (1)
   person per 100 square feet of total area, shall be installed within
   the individual offices, or in a central toilet room area or areas if:
   a. The distance from the main entrance of an office does not
      exceed 500 feet; and
   b. The toilet room area is accessible to physically disabled
      persons.
(c) Sanitary facilities shall be provided as stated in this section.
1. There shall be:
   a. One (1) water closet for one (1) to fifteen (15) persons;
   b. Two (2) water closets for sixteen (16) to thirty-five (35) per-
      sons;
   c. Three (3) water closets for thirty-six (36) to fifty-five (55)
      persons;
   d. Four (4) water closets for fifty-six (56) to eighty (80) persons;
   e. Five (5) water closets for eighty-one (81) to 110 persons;
   f. Six (6) water closets for 111 to 150 persons;
   g. One (1) water closet for each forty (40) additional persons;
   h. One (1) lavatory for one (1) to fifteen (15) persons;
   i. Two (2) lavatories for sixteen (16) to thirty-five (35) persons;
   j. Three (3) lavatories for thirty-six (36) to sixty (60) persons;
   k. Four (4) lavatories for sixty-one (61) to ninety (90) persons;
   l. Five (5) lavatories for ninety-one (91) to 125 persons;
   m. One (1) lavatory for each forty-five (45) additional persons;
   and
   n. One (1) drinking fountain for each seventy-five (75) persons
      or fraction thereof.
2. If urinals are provided, one (1) water closet less than the
   number specified may be provided for each urinal installed if the
   number of water closets is not reduced to less than seventy (70)
   percent of the minimum specified.

Section 14. Swimming Pool Bathhouses. A swimming pool
bathhouse shall comply with the requirements established in 902
KAR 10:120 and this section.
(1) Bathhouses for public swimming pools shall be divided into
two (2) parts separated by a tight partition, with one (1) part desig-
nated for "Males" or "Men" and the other part designated for "Fe-
male" or "Women.
(2) Sanitary facilities shall be provided in each bathhouse to
serve the anticipated bather load, as defined in 902 KAR 10:120,
and shall conform to the following:
(a) For swimming pools in which the total bather capacity is
   200 persons or less, there shall be:
1. One (1) water closet for each seventy-five (75) males or fraction thereof;  
2. One (1) water closet for each fifty (50) females or fraction thereof;  
3. One (1) urinal for each seventy-five (75) males or fraction thereof;  
4. One (1) lavatory for each 100 persons or fraction thereof;  
5. One (1) shower per each fifty (50) persons or fraction thereof; and  
6. One (1) drinking fountain per each 200 persons or fraction thereof.

(b) For swimming pools in which the total bather capacity exceeds 200 persons, there shall be:  
1. Five (5) water closets for 201 to 400 females, with one (1) additional water closet for each additional 250 females;  
2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males;  
3. Three (3) urinals for 201 to 400 males, with one (1) additional urinal for each additional 500 males or fraction thereof;  
4. One (1) lavatory for up to 150 males or females;  
5. Two (2) lavatories for 151 to 400 males or females;  
6. Three (3) lavatories for 401 to 750 males or females;  
7. If in excess of 750 males or females, three (3) lavatories plus one (1) additional lavatory for each additional 750 males or females over 750;  
8. One (1) shower per each fifty (50) persons or fraction thereof up to 150;  
9. If in excess of 150 persons, one (1) additional shower plus one (1) shower per each 500 persons over 650; and  
10. One (1) drinking fountain per each 500 persons or fraction thereof.

Section 15. Park Service Buildings or Bathhouses. A park service building or bathhouse shall comply with the requirements established in 902 KAR 15:020 and this section.

1. Except for a self-contained recreational vehicle park, each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified in this section.

2. Except for a self-contained recreational vehicle park, sanitary facilities shall be provided as follows:

(a) If there are one (1) to fifteen (15) vehicle spaces, there shall be for:  
1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower; and  
2. Females. One (1) water closet, one (1) lavatory and one (1) shower.

(b) If there are sixteen (16) to thirty (30) vehicle spaces, there shall be for:  
1. Males. One (1) water closet, one (1) urinal, two (2) lavatories and two (2) showers; and  
2. Females. Two (2) water closets, two (2) lavatories and two (2) showers.

(c) If there are thirty-one (31) to forty-five (45) vehicle spaces, there shall be for:  
1. Males. Two (2) water closets, one (1) urinal, three (3) lavatories and three (3) showers; and  
2. Females. Two (2) water closets, three (3) lavatories and three (3) showers;  
(d) If there are forty-six (46) to sixty (60) vehicle spaces, there shall be for:  
1. Males. Two (2) water closets, two (2) urinals, three (3) lavatories and three (3) showers; and  
2. Females. Three (3) water closets, three (3) lavatories and three (3) showers;  
(e) If there are sixty-one (61) to eighty (80) vehicle spaces, there shall be for:  
1. Males. Three (3) water closets, two (2) urinals, four (4) lavatories and four (4) showers; and  
2. Females. Four (4) water closets, four (4) lavatories and four (4) showers;  
(f) If there are eighty-one (81) to 100 vehicle spaces, there shall be for:  
1. Males. Four (4) water closets, two (2) urinals, five (5) lavatories and five (5) showers; and  
2. Females. Five (5) water closets, five (5) lavatories and five (5) showers.

Section 16. Residential and Day Camp Sites. A residential or day camp site shall comply with the requirements established in 902 KAR 10:040 and this section.

1(a) Each residential camp site shall be provided with sanitary facilities for each sex as specified in this section.

(b) A day camp shall:

1. Not be required to provide shower facilities; and  
2. Provide all other sanitary facilities for each sex as specified in this section.

2. Sanitary facilities shall be provided as follows:

(a) If there are one (1) to eighteen (18) persons served, there shall be for:  
1. Males. One (1) water closet, one (1) urinal, one (1) lavatory and one (1) shower; and  
2. Females. Two (2) water closets, one (1) lavatory and one (1) shower.

(b) If there are nineteen (19) to thirty-three (33) persons served, there shall be for:  
1. Males. Two (2) water closets, one (1) urinal, two (2) lavatories and two (2) showers; and  
2. Females. Two (2) water closets, two (2) lavatories and two (2) showers.

(c) If there are thirty-four (34) to forty-eight (48) persons served, there shall be for:  
1. Males. Two (2) water closets, two (2) urinals, two (2) lavatories and three (3) showers; and  
2. Females. Three (3) water closets, two (2) lavatories and three (3) showers.

(d) If there are forty-nine (49) to sixty-three (63) persons served, there shall be for:  
1. Males. Three (3) water closets, two (2) urinals, three (3) lavatories and four (4) showers; and  
2. Females. Four (4) water closets, three (3) lavatories and four (4) showers.

(e) If there are sixty-four (64) to seventy-nine (79) persons served, there shall be for:  
1. Males. Three (3) water closets, three (3) urinals, three (3) lavatories and five (5) showers; and  
2. Females. Five (5) water closets, three (3) lavatories and five (5) showers.

(f) If there are eighty (80) to ninety-five (95) persons served, there shall be for:  
1. Males. Four (4) water closets, three (3) urinals, four (4) lavatories and six (6) showers; and
2. Females. Six (6) water closets, four (4) lavatories, and six (6) showers; and 
   (g) If over ninety-five (95) persons are served, there shall be provided:
   1. One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served; 
   2. One (1) additional shower for each twenty (20) persons or fraction thereof served; and 
   3. One (1) additional urinal per fifty (50) additional males or fraction thereof.

   (h) Coed day camps with equal number of males and females shall meet the fixture requirements of Section 6(2) of this administrative regulation. Elementary through secondary level school buildings.

   (3) Water closets may be substituted for urinals if facilities are to be used by both sexes.

Section 17. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. A retail food store or restaurant shall comply with the requirements established in 902 KAR 10:020 and 902 KAR 45:005 and this section.

(1) Food stores.
   (a) If more than five (5) persons of different sex are employed, separate facilities shall be provided for the employees.

   (b) Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more. In a mall or shopping center, the required facilities, based on one (1) person per fifty (50) square feet, shall be installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a store does not exceed 500 feet.

   (c) There shall be:
   1. One (1) water closet for one (1) to 100 persons;
   2. Two (2) water closets for 101 to 200 persons;
   3. Three (3) water closets for 201 to 400 persons;
   4. One (1) water closet for each 500 males or 300 females in excess of 400;
   5. One (1) urinal for eleven (11) to 200 males;
   6. Two (2) urinals for 201 to 400 males;
   7. Three (3) urinals for 401 to 600 males;
   8. One (1) urinal for each 300 males or fraction thereof, over 600;
   9. One (1) lavatory for one (1) to 200 persons;
   10. Two (2) lavatories for 201 to 400 persons;
   11. Three (3) lavatories for 401 to 700 persons;
   12. One (1) lavatory for each 500 persons or fraction thereof in excess of 700;
   13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and
   14. One (1) service sink, utility sink or curbed mop basin per floor as required.

   (2) Restaurants.
   (a) If more than five (5) persons of different sex are employed, separate facilities shall be provided for the employees.

   (b) In a new establishment or an establishment that is extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees. Carryout type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

   (c) There shall be:
   1. Two (2) water closets for one (1) to 100 persons;
   2. Three (3) water closets for 101 to 200 persons;
   3. Four (4) water closets for 201 to 300 persons; and
   4. One (1) water closet for each additional 200 persons or fraction thereof over 300.

   (d) There shall be:
   1. One (1) urinal for eleven (11) to 200 males; and
   2. One (1) additional urinal for each additional 150 males or fraction thereof over 150.

   (e) There shall be:
   1. One (1) lavatory for one (1) to 200 persons;
   2. Two (2) lavatories for 201 to 400 persons;
   3. Three (3) lavatories for 401 to 600 persons; and
   4. One (1) additional lavatory for each additional 200 persons or fraction thereof over 600.

   (f) There shall be:
   1. One (1) drinking fountain for one (1) to 100 persons; and
   2. Two (2) drinking fountains for 101 to 500 persons or fraction thereof.

   (g) If food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

   (h) There shall be one (1) service sink, utility sink or curbed mop basin on each floor as required.

   (i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees. If the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Health Services, it may substitute for the lavatory.

Section 18. Temporary Facilities for Construction Projects. Separate sanitary fixtures shall be provided as scheduled below for both males and females:

(1) One (1) water closet per thirty (30) males or fraction thereof;

(2) One (1) urinal per thirty (30) males or fraction thereof;

(3) One (1) lavatory per thirty (30) males or fraction thereof;

(4) One (1) water closet per twenty (20) females or fraction thereof;

(5) One (1) lavatory per twenty (20) females or fraction thereof; and

(6) One (1) drinking fountain per 100 persons or fraction thereof.

LAJUANA S. WILCHER, Secretary

DENNIS J. LANGFORD, Executive Director

STEVEN A. MILBY, Chairman

APPROVED BY AGENCY: April 13, 2004

FILED WITH LRC: April 15, 2004 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004, at 2:30 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 (five working 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0365, fax (502) 573-1057.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Frank L. Dempsey

(1) Provide a brief summary of:
   (a) What this administrative regulation does: Establishes the minimum fixture requirements for coed day camp buildings in the state of Kentucky.

   (b) The necessity of this administrative regulation: To ensure that coed day camp buildings in the state of Kentucky meets the minimum requirement as established in KRS 58.200.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation relates to coed day camps meeting the fixture requirements as established in 902 KAR 10:040.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides that coed day camps with equal number of males and females shall
meet the fixture requirements. (2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change this existing administrative regulation: The amendment will require that coed day camps meet the fixture requirements of elementary through secondary level school buildings and include editorial changes in compliance with EO 2003-064 and EO 2004-031. (b) The necessity of the amendment to this administrative regulation: The current regulation does not address coed camps. This amendment will provide the standards to be used. (c) How the amendment conforms to the content of the authorizing statutes: The amendment relates to and promotes the use of safe plumbing fixtures. (d) How the amendment will assist in the effective administration of the statutes: The amendment will address coed day camp minimum fixture as it relates to equal number of males and females. (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbers, homeowners or property may be affected by this amendment. (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will implement the fixture requirement in relation to coed day camps. (5) Provide an estimate of how much it will cost to implement this administrative regulation: None (a) Initially. (b) On a continuing basis. (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable. (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary. (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased. (9) TIERING: Is tiering applied? Not applicable to plumbing code product fixture approval.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Plumbing
(Amendment)


RELATES TO: KRS 198B.050, 318.010
STATUTORY AUTHORITY: KRS 198B.050(2), (5), 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.010(4)(e) includes in the definition of "plumbing" medical gas piping. KRS 318.134 requires that a person shall obtain a permit from the office [department] prior to the installation of plumbing and that the office [department] shall cause inspections as it may deem necessary. This administrative regulation defines the term "medical gas piping" in accordance with industry practice; identifies the standard which a licensed plumber shall use when installing this piping; and identifies the permitting, fee and inspection requirements for this special type of installation.

Section 1. Definitions. (1) "Health care facility" means a hospital, nursing home, limited care facility, clinic, ambulatory care center, or office practice medical or dental office as defined in NFPA 99C. (2) "Medical gas piping" means a permanent fixed piping system in a health care facility which is used to convey oxygen, nitrous oxide, nitrogen, carbon dioxide, helium, medical air and mixtures of these gases from its source to the point of use and includes the fixed piping associated with a medical, surgical or gas scavenging vacuum system, as well as a bedside suction system. (3) "NFPA" means the National Fire Protection Association.

Section 2. Standards and Procedures. (1) Installation standards. A new medical gas piping installation or an addition to an existing medical gas piping system shall comply with the applicable provisions of "NFPA 99C, Standard on Gas and Vacuum Systems, 2002 [1996] Edition". (2) Permit required. The licensed master plumber shall make application for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall: (a) Pay a fee of twenty-eight (28) dollars for the medical gas system for each building; and (b) Identify the person who shall perform the installation. The person making the installation shall be a certified medical gas fitter as well as a licensed journeymen plumber. (3) Supervision of the master. It shall be the responsibility of the licensed master plumber to assure that: (a) The person doing the brazing; 1. Is properly certified as required by NFPA 99C; and 2. Uses the proper process and stores them correctly; and (b) Required testing and purging of the piping system is done prior to the putting the system into service. (4) Final approval. Upon completion of the installation, the master plumber shall furnish the Division of Plumbing with the following certifications: (a) Certification from the medical gas supplier or other qualified third party that the installation, including each outlet, meets the testing and purging requirements of the code; and (b) Certification that the installation was performed by the certified fitter.

Section 3. Incorporation by Reference. (1) "NFPA 99C Standard on Gas and Vacuum Systems", 2002 [1996] Edition, National Fire Protection Association, is incorporated by reference. (2) It may be inspected, copied, or obtained at the Office [Department] of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m. (3) A copy may also be obtained by contacting the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

LAJUANA S. WILCHER, Secretary
DENNIS J. LANGFORD, Executive Director
STEVEN A. MILBY, Chairman
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 15, 2004 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004, at 3 p.m., EDT, in the Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received before that date, the hearing may be canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

CONTACT PERSON: Frank L. Dempsey, Office of General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0935, fax (502) 573-1027.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Frank L. Dempsey
(1) Provide a brief summary of:
   (a) What this administrative regulation does: Defines the term "medical gas piping" in accordance with industry practice; identifies the standard which a licensed plumber shall use when installing this piping; and identifies the permitting, fee and inspection requirements for this special type of installation.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation provides for the update of standards for licensed plumbers to use in installing piping.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Provides the updated editions of the NFPA standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendment will update the NFPA standards and include editorial changes in compliance with EO 2003-064 and EO 2004-031.
   (b) The necessity of the amendment to this administrative regulation: To provide up-to-date standards for installation of gas piping systems.
   (c) How the amendment conforms to the content of the authorizing statutes: The amendment relates to and promotes the safe use of installation standards.
   (d) How the amendment will assist in the effective administration of the statutes: The amendment complies with the standards of piping installation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All plumbers, homeowners or property owners may be affected by this amendment.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment implements the 2002 piping standards.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially:
   (b) On a continuing basis:

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased.

(9) TIERING: Is tiering applied? Not applicable to installation standards.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(Amendment)

907 KAR 1:019. Outpatient Pharmacy Program.

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561, 205.563, 205.564, 205.636, 205.845, 217.015, 217.020, 42 C.F.R. 801.10, 431.54, 440.120, 447.331, 447.332, 448.333, 447.334, 42 U.S.C. 1396a, 410.1396b, 1396c, 1396d, 1396f-8

STATUTORY AUTHORITY: KRS 194A.030(2) [(3)], 194A.050(1), 205.520(3), 205.561, 205.563, 205.564, 205.5639(2), 205.584(10), (13), EO 2003-064

NECESSITY, FUNCTION, AND CONFORMITY: EO 2003-64, effective December 16, 2003, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program including the establishment of prior authorization procedures as authorized by KRS 205.5632 and Pharmacy and Therapeutics Advisory Committee provisions as authorized by KRS 205.564.

Section 1. Definitions. (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Commissioner" is defined by KRS 205.5631(1).

(3) "Covered drug" means a drug for which the Department for Medicaid Services provides reimbursement if medically necessary and otherwise excluded, by Sections 2 and 3 of this administrative regulation.

(4) "Department" means the Department for Medicaid Services or its designated agent.

(5) "Department's Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at [http://chsm.state.ky.us/dms] [https://chsm.state.ky.us/dms]

(6) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(7) "Drug list [formulary]" means the Department for Medicaid Services' list which:

(a) Specifies:
   1. Drugs and drug categories not covered by the department;
   2. Covered drugs requiring prior authorization or having special prescribing or dispensing restrictions or excluded medical uses; and
   (b) May include information about other drugs or drug categories and dispensing and prescribing information.

(8) "Drug Management Review Advisory Board" or "DMRAB" or "board" means the board established pursuant to KRS 205.5636.

(9) "Effective" or "effectiveness" means a finding that a pharmaceutical agent does or does not have a significant, clinically-meaningful therapeutic advantage in terms of safety, usefulness, or clinical outcome over the other pharmaceutical agents based on pertinent information from a variety of sources determined by the department to be relevant and reliable.

(10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug.

(12) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription".

(13) "Maintenance drug dispensing fee exception" means an approval by the department for payment of a dispensing fee in accordance with 907 KAR 1:018 for a drug that has been designated as a maintenance drug in the department's drug list [formulary].
Section 2. Covered Benefits and Drug List [Formulary]. (1) A drug covered through the Outpatient Pharmacy Program shall be:
(a) Medically necessary;
(b) Approved by the Food and Drug Administration; and
(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in official compendia or peer-reviewed medical literature supporting its medical use.
(2) The department shall have a drug list [formulary] which:
(a) Lists drugs and drug categories not covered by the department and, if applicable, excluded medical uses for covered drugs;
(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;
(c) Specifies those covered drugs for which the maximum quantity limit on dispensing may be exceeded;
(d) Lists covered over-the-counter drugs;
(e) Specifies those legend drugs which are permissible restrictions under 42 U.S.C. 1396r-8(d), but for which the department makes reimbursement;
(f) Specifies covered vaccines;
(g) May include a preferred drug list of selected drugs which have a more favorable cost to the department and which prescribers are encouraged to prescribe, if medically appropriate;
(h) May be updated monthly or more frequently by the department; and
(i) Shall be posted on the department's Internet web site.
(3) The department may implement drug treatment protocols requiring the use of medically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization. The department may approve a request from the prescriber or a pharmacist for exemption of a specific recipient from this requirement based on documentation that drugs available without prior authorization:
(a) Were used and were not an effective medical treatment or lost their effectiveness;
(b) Are reasonably expected to not be an effective medical treatment;
(c) Resulted in, or are reasonably expected to result in, a clinically-significant adverse reaction or drug interaction; or
(d) Are medically contraindicated.

Section 3. Exclusions and Limitations. (1) The following drugs shall be excluded from coverage:
(a) A drug which the Food and Drug Administration considers to be:
   (1) A less-than-effective drug; or
   (2) Identical, related, or similar to a less-than-effective drug;
(b) A drug or its medical use in one (1) of the following categories unless the drug or its medical use is designated as covered in the drug list [formulary]:
   1. A drug if used for anorexia, weight loss, or weight gain;
   2. A drug if used to promote fertility;
   3. A drug if used for cosmetic purposes or hair growth;
   4. A drug if used for the symptomatic relief of cough and colds;
   5. A drug if used to promote smoking cessation;
   6. Vitamin or mineral products other than prenatal vitamins and fluoride preparations;
   7. An over-the-counter drug;
   8. A barbiturate;
   9. A benzodiazepine; or
   10. A drug which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designated suppliers.
(c) A drug for which the manufacturer has not entered into or complied with a rebate agreement in accordance with 42 U.S.C. 1396r-8(a), unless there has been a review and determination by the department that it is in the best interest of recipients for the department to make payment for the drug and federal financial participation is available for the drug;
(d) Except in accordance with subsection (7) of this section, a drug dispensed as part of, or incident to and in the same setting as, an inpatient hospital service, an outpatient hospital service, or an ambulatory surgical center service;
(e) A drug for which the department requires prior authorization if prior authorization has not been approved; and
(f) A drug that has reached the manufacturer's termination date, indicating that the drug may no longer be dispensed by a pharmacy.
(2) If authorized by the prescriber, a prescription for a:
(a) Controlled substance in Schedule III-V may be refilled up to five (5) times within a six (6) month period from the date the prescription was written or ordered, at which time a new prescription shall be required; or
(b) Noncontrolled substance may be refilled up to eleven (11) times within a twelve (12) month period from the date the prescription was written or ordered, at which time a new prescription shall be required.
(3) For each initial filling or refill of a prescription, a pharmacist shall dispense the drug in the quantity prescribed not to exceed a thirty-two (32) day supply unless:
(a) The drug is designated in the department's drug list [formulary] as a drug exempt from the thirty-two (32) day dispensing limit in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;
(b) A prior authorization request has been submitted on the Drug Prior Authorization Request Form (MAP-82001) and approved by the department because the recipient needs additional medication while traveling or for a valid medical reason, in which case the pharmacist may dispense the quantity prescribed not to exceed a three (3) month supply or 100 units, whichever is greater;
(c) The drug is prepackaged by the manufacturer and is intended to be dispensed as an intact unit and it is impractical for the pharmacist to dispense only a month's supply because one (1) or more units of the prepackaged drug will provide more than a thirty-two (32) day supply.
(4) Prior authorization shall be obtained from the department in accordance with Section 4(1)(a) of this administrative regulation for maintenance drug dispensing fee exceptions if a refill of a maintenance drug occurs less than twenty-three (23) days from the last date the drug was dispensed.
(5) The department may require prior authorization for a compounded drug that requires preparation by mixing two (2) or more individual drugs; however, the department may exempt a compounded drug or compounded drug category from prior authorization if there has been a review and determination by the department that it is in the best interest of recipients for the department to make payment for the compounded drug or compounded drug category.
(6) An identification number shall be made available by a prescriber and shall be recorded on the pharmacy claim in accordance with the following:
(a) The medical license number of a physician for the state in which the physician practices or, for a physician who does not have a Kentucky state medical license number on file and who is enrolled in an approved graduate medical education program, the medical license number of the supervising physician;

(b) The license number, including applicable alpha characters, of a dentist, optometrist, or podiatrist for the state in which the individual practices;

(c) The registration number, including applicable alpha characters, of an advanced registered nurse practitioner registered in Kentucky or the registration number or license number, including applicable alpha characters, of an out-of-state advanced registered nurse practitioner for the state in which the individual practices; or

(d) The certification number, including applicable alpha characters, of a physician assistant for the state in which the individual practices.

(7) If it is determined by the department to be in the best interest of recipients, the department may designate a legend drug that may be provided through prior authorization to a recipient in an inpatient facility that does not bill patients, Medicaid, or other third-party payers for health care services.

(8) A recipient who has been restricted to a single pharmacy in accordance with 907 KAR 1:677 shall be required to obtain nonemergency pharmacy services from the pharmacy to which the recipient has been restricted.

Section 4. Prior Authorization Process. (1) To request prior authorization for a drug, the applicable Drug Prior Authorization Request Form, PPI and H2 Blocker Request Form, or the Brand Name Drug Request Form shall be completed and sent by fax or, if necessary, by mail, express-delivery service, or messenger service to the department. If drug therapy needs to be started on an urgent basis to avoid jeopardizing the health of the recipient or to avoid causing substantial and suffering, the completed request form may be sent to the department's urgent fax number. A request shall be submitted in accordance with the following:

(a) Drug Prior Authorization Request Form. This form shall be used by the prescriber or the pharmacist to request prior authorization for a drug other than a drug classified as a proton pump inhibitor or a H2 receptor blocker or for a brand name only request if the generic form of the drug is available. This form may also be used by the pharmacist to obtain prior authorization for special dispensing requests involving:

1. Maintenance drug dispensing fee exceptions; or
2. Exceptions to the thirty-two (32) day maximum quantity limit including additional drugs needed for travel or other valid medical reasons.

(b) Brand Name Drug Request Form. Except as provided in paragraphs (c) and (d) of this subsection, this form shall be used by the prescriber to request prior authorization for a brand name only request if the generic form of the drug is available. The department has specifically exempted the drug from the requirement to use this form. The prescriber shall:

1. Complete a Brand Name Drug Request Form;
2. Include on the Brand Name Drug Request Form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested; and
3. Indicate on the Brand Name Drug Request Form:
   a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and
   b. Why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(c) A Brand Name Drug Request Form shall not be required if:
1. It has been determined by the department to be in the best interest of recipients not to require completion of a Brand Name Drug Request Form; and
2. The prescriber certifies that the brand name is medically necessary in accordance with subsection (3) of this section.

(d) PPI and H2 Blocker Request Form. This form shall be used to request prior authorization for a drug classified as a proton pump inhibitor or a H2 receptor blocker. This form may also be used for a brand name only request if the generic form of the proton pump inhibitor or H2 receptor is available and the prescriber completes the applicable section of the form and:

1. Includes on the form the handwritten phrase "brand medically necessary" or "brand necessary" and the prescriber's signature for each specific drug requested;
2. Indicates whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy; and
3. Indicates why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

(2) If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist:

(a) Shall, unless the form is one (1) which has to be completed by the prescriber, submit a request for prior authorization in accordance with subsection (1) of this section;
(b) Shall notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization and:
1. If the prescriber indicates that a drug list [formulary] alternative available without prior authorization is acceptable and provides a new prescription, shall dispense the drug list [formulary] alternative; or
2. If the prescriber indicates that drug list [formulary] alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider drug list [formulary] alternatives, shall:
   a. Request that the prescriber obtain prior authorization from the department; or
   b. Unless the form is one (1) which has to be completed by the prescriber, submit a prior authorization request in accordance with subsection (1) of this section; or
(c) Except as restricted by subparagraphs 3 and 4 of this paragraph, may provide the recipient with an emergency supply of the prescribed drug in an emergency situation in accordance with all of the following:

1. The emergency situation shall:
   a. Occur outside normal business hours of the department's drug prior authorization office, except for medications dispensed to a long term care recipient in which an emergency supply may be dispensed after 5 p.m. EST; and
   b. Exist if, based on the clinical judgement of the dispensing pharmacist, it would reasonably be expected that, by a delay in providing the drug to the recipient, the health of the recipient would be placed in serious jeopardy or the recipient would experience substantial pain and suffering;
2. At the time of the dispensing of the emergency supply, the pharmacist shall in accordance with subsection (1) of this section:
   a. Submit a prior authorization request to the department's urgent fax number; or
   b. If applicable, notify the prescriber as soon as possible that an emergency supply was dispensed and that the prescriber is required to obtain prior authorization for the requested drug from the department;
3. An emergency supply shall not be provided for an over-the-counter (OTC) drug;
4. An emergency supply shall not be provided for a drug excluded from coverage in accordance with Section 3(1) (a), (b) and (c) of this administrative regulation;
5. The quantity of the emergency supply shall be:
   a. The lesser of a seventy-two (72) hour supply of the drug or the amount prescribed; or
   b. The amount prescribed if it is not feasible for the pharmacist to dispense just a seventy-two (72) hour supply because the drug is packaged in such a way that it is not intended to be further divided at the time of dispensing but rather dispensed as originally packaged.

(3) In addition to the requirements of subsection (1) of this section, the prescriber shall be required to certify a brand name only request by including for each brand name drug requested the prescriber's signature and the phrase "Brand Medically Necessary" or "Brand Necessary" handwritten directly on:

(a) The prescription;
(b) The nursing facility order sheet; or
(c) A separate sheet of paper which includes the name of the recipient and the brand name drug requested and is attached to
the original prescription or nursing facility order sheet.

(4) The department's notification of a decision on a request for prior authorization shall be made in accordance with the following:

(a) If the department approves a prior authorization request, notification of the approval shall be provided by telephone or fax to the party requesting the prior authorization and, if known, to the pharmacist.

(b) If the department denies a prior authorization request:

1. The department shall provide a denial notice:

a. By mail to the recipient and in accordance with 907 KAR 1:563; and

b. By fax, telephone, or if necessary by mail to the party who requested the prior authorization.

(5) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a time-limited prior authorization request.

(6) Prior authorization of drugs for Medicaid recipients in nursing facilities shall be in accordance with the following:

(a) The department may specify in its drug list [formulary] specific drugs or drug classes which shall:

1. Not be exempted from prior authorization through use of a MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior Authorized for Nursing Facility Resident; or

2. Be exempt from prior authorization for Medicaid recipients in nursing facilities.

(b) A brand name drug for which the department requires completion by the prescriber of a Brand Name Drug Request Form in accordance with this section shall not be exempted from prior authorization by use of a MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior Authorized for Nursing Facility Residents.

Section 5. Placement of Drugs on Prior Authorization. (1) Except as excluded by Section 3(1)(a) to (c) of this administrative regulation, upon initial coverage by the Kentucky Medicaid program, a drug that is newly approved for marketing by the Food and Drug Administration under a product licensing application, new drug application, or a supplement to a new drug application and that is a new chemical or molecular entity;

(a) Shall be subject to [shall be exempt from] prior authorization in accordance with KRS 205.5632 unless:

(1) The Pharmacy and Therapeutics Advisory Committee has reviewed the drug and made a recommendation regarding prior authorization and a final determination regarding prior authorization has been made by the secretary; or

(b) The drug is in a specific class of drugs for which the committee has recommended, and the secretary has determined, that all new drugs shall require prior authorization upon initial availability, in which case the drug shall require prior authorization and shall be scheduled for review by the committee within seventy-five (75) days of implementation of a requirement for prior authorization of the drug.

(2) Upon request by the department, a drug manufacturer shall provide the department with the drug package insert information, following information about a drug:

(a) The manufacturer's name, address, telephone number, fax number, and the name of a contact person;

(b) Information about the drug, including the name of the drug, the National Drug Code number, the Average Wholesale Price, and the estimated cost per day of therapy;

(c) The date the drug became available on the market;

(d) Whether the drug is one (1) for which the manufacturer has entered into a rebate agreement in accordance with 42 U.S.C. 1396r-9(a);

(e) Drug package insert information; and

(f) A statement regarding whether the drug is a new chemical or molecular entity.

(3) The drug review process to determine if a drug shall require prior authorization shall be in accordance with the following:

(a) The determination as to whether a drug is in an excluded category specified in Section 3(1) of this administrative regulation shall be made by the department.

1. If a drug which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug the new strength, package size, or other form shall require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active drug ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug shall require prior authorization in accordance with Section 4 of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of recipients for the department to cover the drug without prior authorization.

(b) The committee shall make a recommendation to the department regarding prior authorization of a drug on:

1. A review of clinically-significant adverse side effects, drug interactions and contraindications and an assessment of the likelihood of significant abuse of the drug; and

2. An assessment of the cost of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a substantial clinically-meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication. Cost shall be based on the net cost of federal rebate and supplemental rebate dollars.

(c) Within thirty (30) days of the date the committee's recommendation is posted on the department's web site, the secretary, in consultation with the commissioner and the department's pharmacy [medical] director, shall review the recommendations of the committee and make the final determination whether a drug requires prior authorization. If the recommendation of the committee is not accepted, the secretary shall present the basis for the final determination in accordance with Section 8(3) of this administrative regulation.

(4) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 U.S.C. 1396-8(6).

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMARB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(2) The DMARB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department's Internet web site at least five (5) days prior to the meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5633(5). The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) A P&T Committee meeting agenda shall be posted as required by KRS 205.564(6).

(2) A P&T committee meeting shall be conducted in accordance with KRS 205.564.

(3) The department may prepare written recommendations or options for drug review for the committee and shall post them as required by KRS 205.564(6).

(4) The chair of the committee shall manage the meetings in a manner that shall provide for the orderly business of the committee and that shall provide reasonable opportunity for individuals to provide the committee with information in accordance with subsection (a) of this section.

(5) Any individual shall be permitted to make a presentation of written comments and documents to the committee in accordance with the following:

(a) The presentation or written comments and documents shall
be limited to an agenda item;
(b) A request to make a presentation or provide comments or documents shall be submitted in writing to the department with a copy to the chair of the committee at least twenty-four (24) hours prior to the meeting; and
(c) The time limit for a presentation shall not exceed fifteen (15) minutes per drug manufacturer or individual speaking on a particular position. The committee may vote to extend or restrict the time limitation for presentations.

(4) A recommendation by the committee shall require a majority vote.
(5) Recommendations of the committee shall be posted as required by KRS 205.564(6).
(6) A drug manufacturer may request that its name be placed on the department’s distribution list for agendas of committee meetings. Placement of a drug manufacturer’s name on the distribution list shall be valid through December 31 of each year, at which time the drug manufacturer shall be required to again request placement on the distribution list. To request placement of the drug manufacturer’s name on the distribution list, the drug manufacturer shall submit the request in writing to the department and shall provide the following information about the drug manufacturer:
(a) Manufacturer’s name;
(b) Mailing address;
(c) Telephone number;
(d) Fax number;
(e) E-mail address; and
(f) Name of a contact person.
(7) A drug manufacturer may be requested to submit a supplemental rebate proposal to the department based on a medication to be discussed at a designated P&T meeting.
(8) A supplemental rebate proposal submitted to the department shall be provided to P&T members during a closed session.

Section 6. Drug Classes for P&T Committee Review. Following are the drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list:

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<th>Narcotics - Long Acting</th>
<th>Nondihydropyridine Calcium Channel Blockers</th>
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<td>Nonsteroidal Anti-inflammatory - COX II Inhibitors</td>
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<td>Hepatitis C</td>
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<td>Macrolides</td>
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<td>Histamine-2 Receptor Antagonists (H2RA)</td>
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<td>Quinolones Third Generation</td>
<td>Proton Pump Inhibitors (PPI)</td>
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Antihistamines - Second Generation
Nausea Agents (SHT3)
Beta Adrenergics - Short Acting
Glaucome - Alpha 2 Adrenergics
Beta Adrenergics - Long Acting
Glaucome - Beta Blockers
Beta Adrenergics for Nebulizers
Glaucome - Prostaquinolin Inhibitors
Inhaled Systemic Glucocorticoids
Glaucome - Carbonic Anhydrase Inhibitors
Leukotrienes Inhibitors
Glaucome - Miscellaneous
Nasal Steroids
Osteopora Agents
ACE Inhibitors
Serotonin Receptor Agents
Angiotensin Receptor Antagonists
Beta Blockers
Dihydropyridine Calcium Channel Blockers

Section 9. [8.] Review and Final Determination by the Secretary
(1) An interested party who is adversely affected by a recommendation of the committee may submit a written exception to the secretary in accordance with the following:
(a) The written exception shall be received by the secretary within seven (7) calendar days of the date of the committee meeting at which the recommendation was made; and
(b) Only information that was not available to be presented at the time of the committee’s meeting shall be included in the written exception.
(2) After the time for filing written exceptions has expired, the secretary shall consider the recommendation of the committee and all exceptions that were filed in a timely manner prior to making a final determination. The secretary shall issue a final determination, and public notice of the final determination shall be posted on the department's Internet website for six (6) months after which a copy of the final determination may be requested from the department.
(3) The secretary shall make a final determination in accordance with KRS 205.564(9).
(4) A final determination by the secretary may be appealed in accordance with KRS Chapter 13B. A decision of the secretary to remand the recommendation to the committee shall not constitute a final decision for purposes of an appeal pursuant to KRS Chapter 13B. An appeal request shall:
(a) Be in writing;
(b) Be sent by mail, messenger, carrier service, or express delivery service to the secretary in a manner that safeguards the information;
(c) State the specific reasons the final determination of the secretary is alleged to be erroneous or not based on the facts and law available to the committee and the secretary at the time of the decision;
(d) Be received by the secretary within thirty (30) days of the date of the posting of the final determination on the department's Internet website; and
(e) Be forwarded by the secretary to the Administrative Hearings Branch of the Cabinet for Health Services for processing in accordance with the provisions of KRS Chapter 13B.

Section 10. [9.] Appeal Rights. A Medicaid recipient may appeal the department’s denial, suspension, reduction, or termination of a covered drug based upon an application of this administrative regulation in accordance with KRS 907 KAR 1:563.

Section 11. [40.] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "MAP-82001 Drug Prior Authorization Request Form, January 20, 2003 [February 8, 2002], edition;"
(b) "MAP-82101 Brand Name Drug Request Form, March 3, 2003 [February 8, 2002], edition;"
(c) "MAP-012802 PPI and H2 Blocker Request Form, March 3, 2004 [January 28, 2002], edition; and..."
(d) "MAP-573 Kentucky Medicaid Program Request Form for Drugs Prior-Authorized for Nursing Facility Residents, December 1995 edition".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RUSS FENDLEY, Commissioner
JAMES W. HOLSPINGER, JR., M.D., Secretary
APPROVED BY AGENCY: March 31, 2004
FILED WITH LRC: April 5, 2004 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 21, 2004, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 2004, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the public hearing is received by that date, the hearing may be canceled. 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. You may submit written comments regarding this proposed administrative regulation until close of business, June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health and Family Services, Office of the Counselor, 275 East Main Street - SW-10, Frankfort, Kentucky 40621, phone (502) 564-7017, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Teresa Goodrich or Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the provisions for coverage of drugs through the Department for Medicaid Services (DMS) Outpatient Pharmacy Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through the DMS Outpatient Pharmacy Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for coverage of drugs through the DMS Outpatient Pharmacy Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through the DMS Outpatient Pharmacy Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. The amendment to this administrative regulation establishes a supplemental rebate procedure; establishes prescription refill policy for controlled substances in Schedule III-V and noncontrolled substances; allows an emergency supply of a drug for a long term care recipient to be dispensed after 5 p.m. EST and establishes drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to maintain the viability of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by establishing a supplemental rebate procedure; by establishing prescription refill policy for controlled substances in Schedule III-V and noncontrolled substances; by allowing an emergency supply of a drug for a long term care recipient to be dispensed after 5 p.m. EST and by establishing drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to this administrative regulation assists in the effective administration of the statutes by establishing a supplemental rebate procedure; by establishing prescription refill policy for controlled substances in Schedule III-V and noncontrolled substances; by allowing an emergency supply of a drug for a long term care recipient to be dispensed after 5 p.m. EST; and by establishing drug classes that may be evaluated annually by the P&T committee for establishing and maintaining the preferred drug list.

(e) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect pharmacy services providers as well as Medicaid recipients.

(f) Provide a statement of how much it will cost to implement this administrative regulation:

(a) Initially: DMS estimates this amendment will offset state fiscal year (SFY) 2005 expenditures by $40 million ($27.9 million federal funds; $12.1 million state funds).

(b) On a continuing basis: DMS estimates this amendment will offset SFY 2005 expenditures by $40 million ($27.9 million federal funds; $12.1 million state funds).

(g) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding will be state and federal.

(h) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(i) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation will not establish any fee nor increase any fee.

(j) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all drugs and all entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Pursuant to 42 U.S.C. 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 2:500. Family Alternatives Diversion or "FAD".

RELATES TO: KRS 205.200, 205.2003, 205.211, 42 U.S.C.
601-619, EO 2003-064

STATUTORY AUTHORITY: KRS 205.200(2)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for
Health and Family Services (Families and Children) has the
responsibility under the provisions of KRS Chapter 205 to admin-
ister the block grant program funded under 42 U.S.C. 601 et seq.
EO 2003-064 reorganizes the executive branch of government and
establishes the Cabinet for Health and Family Services, KRS
205.200(2) requires the cabinet to prescribe, by administrative
regulation, the conditions of eligibility for public assistance, in con-
formity with the Social Security Act, 42 U.S.C. 601-619, and federal
regulations. This administrative regulation establishes require-
ments for the Family Alternatives Diversion Program.

Section 1. Definitions. (1) "Benefit group" means a group that
meets the eligibility requirements established in 921 KAR 2:006.
(2) "Cabinet" means Cabinet for Families and Children.
(3) "Kentucky Transitional Assistance Program" or "K-TAP", "Kentucky's Temporary Assistance for Needy Families" or "TANF" Program, means a money payment program for children who are deprived of parental support or care in accordance with 921 KAR 2:006.
(4) (4d) "Overpayment" means a FAD benefit received by an individual who:
(a) After an initial determination of eligibility is determined to be
ineligible for the program and erroneous benefits were received by the
individual; or
(b) Is determined eligible for the program and refuses to apply
the benefit to the provider of the service needed to resolve the
short-term emergency as indicated by the individual at the time of
the application.
(5) [6] "Self-supporting" means an individual who:
(a) Is employed in accordance with 921 KAR 2:006, Section 1; or
(b) Shall be employed in accordance with 921 KAR 2:006, Section 1, within the subsequent three (3) months.
(6) [6] "Unsubsidized child care" means child care for which
financial assistance is not provided.

Section 2. Eligibility for Family Alternatives Diversion or "FAD".
(1) To qualify for FAD benefits, the benefit group shall:
(a) Meet monthly income and resource requirements in the month of application as established in 921 KAR 2:016, Sections 2, 3(1), 4(1), and 6;
(b) Except for the thirty (30) day unemployment requirement for
unemployed parent cases as described in 921 KAR 2:008, Section 9(7) [6][e] that shall not be required, meet technical requirements of K-TAP in accordance with 921 KAR 2:006;
(c) Not be currently receiving ongoing K-TAP benefits;
(d) Have a verified short-term need to include:
1. Car repair, to be:
   a. Completed by a mechanic who is employed by a garage;
   b. Completed by a vocational school automotive program; or
   c. The responsibility of the FAD recipient, if a payment is made
      for a new or used automotive part;
2. [a] Other transportation assistance;
4. [3] Utilities payment assistance;
5. [4] Housing payment assistance; or
6. [5] Items required for employment; and [ ]
(e) Be determined by the cabinet to be self-supporting if the
short-term need is met.
(2) The FA-1, Transitional Assistance Self-assessment Survey, shall
be used:
(a) To screen applicants for K-TAP; and
(b) Together with the FA-2, Family Alternatives Assessment, to
determine eligibility for FAD.
(3)(a) The cabinet shall coro to determine if a potential K-
TAP eligible benefit group may be a family eligible to receive FAD
benefits.
(b) The K-TAP eligible benefit group shall be notified of the
option to decline FAD benefits in lieu of applying for ongoing K-
TAP benefits.
(c) FAD shall be utilized instead of K-TAP if requested by the
benefit group and if the benefit group is deemed eligible for FAD.
(4)(a) The benefit group's countable gross income shall include
earned and unearned income in accordance with 921 KAR 2:016, Sections 3 and 4.
(b) The benefit group's gross income shall be computed using
the best estimate of income for the month of application in accordan-
ces with 921 KAR 2:016, Section 9.
(c) The benefit group's total gross earned and unearned in-
come as determined in paragraph (b) of this subsection shall be
compared to the maximum gross income scale for K-TAP in accordan-
ces with 921 KAR 2:016, Section 8(2)(b).
(d) If the benefit group's total gross earned and unearned in-
come exceeds the maximum gross income limit for the appropriate
benefit group size, pursuant to 921 KAR 2:016, Section 8(2), the
family shall not be eligible for a FAD payment.
(5)(a) The FAD eligibility period for an approved FAD applica-
tion shall be a three (3) consecutive month period beginning with
the month of issuance of the first FAD check or voucher.
(b) One (1) or more checks up to $1,300, to the extent funds
are available, may be issued to resolve a short-term need as
specified in subsection (1)(d) of this section during the three (3)
month eligibility period.
(c) One (1) approval during the three (3) month eligibility period
shall be necessary to issue one (1) or more checks.
(d) An adult member of a benefit group shall not be approved
for FAD more than once during a twenty-four (24) month period.
(e) An adult member of a benefit group shall not be approved
for FAD more than twice in a lifetime.
(f) If the adult member of a benefit group has voluntarily quit
employment, the adult member shall not be eligible to receive FAD,
unless the adult meets criteria specified in 921 KAR 2:370, Section
6(1)(a) through (k).

Section 3. Authorization of a FAD Payment. (1) The amount of
the eligible FAD payment shall be issued in one (1) or more
checks or vouchers to:
(a) A vendor; or
(b) The eligible FAD benefit group and vendor, as a two (2)
party check; or
(c) The eligible FAD benefit group if the vendor refuses to:
1. Accept a payment or voucher; or
2. Provide the cabinet with a tax identification number.
(2) Except for purchases of merchandise or goods, a FAD
payment shall not be issued to a vendor who is required and fails
to provide signed documentation of:
(a) A tax identification number or Social Security number; and
(b) Verification of services.
(3) Total payments during the three (3) month FAD eligibility
period shall not exceed $1,300, to the extent funds are available.

Section 4. Coordination with K-TAP and Other Benefit Pro-
grams. (1) Receipt of a FAD payment shall exclude the benefit
group from receiving ongoing K-TAP benefits for twelve (12)
months unless nonreceipt would result in:
(a) Abuse or neglect of a child, as determined pursuant to KRS
600.020(1); or
(b) The parent's inability to provide adequate care or supervi-
sion due to the loss of employment through no fault of the parent.
(2) A benefit group shall not be eligible to receive Work Incentive
(WIN) and K-Tap or FAD funds concurrently.
(3) An application shall be taken or a referral made for the
following benefits as needed for a FAD eligible family:
(a) Food stamps;
(b) Medicaid; [and]
(c) Child care; and
(d) Child support.
(4) [10] For a FAD eligible benefit group, [referral for other services shall be made as needed] by:
(a) Other Kentucky state agencies including:
   1. The Division of Child Support;
   2. The Cabinet for Health Services; and
   3. The Department for Employment Services; or
(b) Charitable organizations;
(5) A referral shall be made as needed for other services [as needed] through other state agencies, contractors, or charitable organizations [the Department for Employment Services or other contractors to the FAD eligible benefit group] to include the following services:
(a) Job search;
(b) Job readiness assessment; [and]
(c) Life skills; and
(d) Other food benefit programs.
Section 5. [Eligibility for Employment Retention Assistance, or “ERA”]. This section shall be in effect until the date of implementation of the program established by 921 KAR 2:520, Work Incentive, or “WIN”.
(a) ERA funds shall be available to a family that:
   (a) Has a parent who has been discontinued from K-TAP with earnings;
   (b) Has a parent who is employed at the time services are requested;
   (c) Has total gross income at or below 200 percent of federal poverty level;
   (d) Requires a service or item which would stabilize the family and allow continued employment; and
   (e) Has not received an ERA payment during the previous twelve (12) months.
(3) The ERA eligibility period for a discontinued K-TAP recipient shall be twelve (12) months, beginning with the effective date of discontinuance.
(4) During the eligibility period, one (1) or more checks totaling up to $1,500 may be issued in order to resolve an emergency situation.
(5) A benefit group may receive K-TAP funds following the ERA eligibility period, if all K-TAP eligibility requirements are met.
(6) A benefit group shall not be eligible to receive ERA and K-TAP or FAD funds concurrently.
Section 6. [7] Overpayments. (1) The cabinet shall recover the amount of an overpayment, including assistance paid pending the outcome of a hearing, from the claimant-payee.
(2) An overpayment shall be recovered through:
   (a) Repayment by the claimant-payee to the cabinet; or
   (b) Cabinet initiation of a civil action in the court of appropriate jurisdiction after the claimant-payee has exhausted or abandoned the administrative and judicial remedies specified in 921 KAR 2:055.
Section 8. [7] Hearing Rights. Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient in accordance with 921 KAR 2:055.
Section 7. [8] Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "FA-1, Transitional Assistance Self-assessment, edition 09/04"; and [11/02]"
   (b) "FA-2, Family Alternatives Assessment, edition 08/04 [1/02/03]"
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.
MIKE ROBINSON, Commissioner

JAMES W. HOLISINGER, JR., M.D., Secretary
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 2004, five workdays 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 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. 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Becky Conner, Cabinet for Health and Family Services, Office of Legal Services, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, phone (502) 564-7900, fax (502) 564-9126.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the requirements for the Family Alternatives Diversion Program or "FAD."
(b) The necessity of this administrative regulation: FAD provides temporary assistance to families discontinued from the Kentucky Temporary Assistance Program or "K-TAP" to prevent the parent from losing employment and to remain self-sufficient.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 205.200(2) requires the Cabinet for Health and Family Services to prescribe by regulation the conditions of eligibility for public assistance in conformity with federal statutes and regulations. This administrative regulation sets forth the requirements for the FAD program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes uniform conditions and requirements under which the cabinet administers FAD.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended regulation clarifies the issuance of a FAD payment, clarifies referral of benefits, deletes the Employment Retention Assistance or "ERA" Program section, and implements a payment method to prevent program fraud and abuse.
(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to clarify the process for issuance of a FAD payment, clarify that a FAD eligible family is informed and referral made for other benefits, delete an unnecessary section regarding ERA, which no longer exists due to implementation of the Work Incentive "WIN Program established in 921 KAR 2:520, and establish a control mechanism for program fraud and abuse.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to KRS 205.200(2) by establishing provisions for FAD.
(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes uniform conditions and requirements under which the cabinet administers FAD.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The affected entities are families who are potentially eligible for K-TAP who are not currently receiving ongoing K-TAP benefits who only need assistance to meet a short-term need instead of ongoing assistance. For State Fiscal Year 2004, as of
January 2004, there were a total of 5,066 families who received FAD.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funding - Temporary Assistance for Needy Families or "TANF".

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no fees and FAD is federally funded through TANF.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied since policy is applied in a like manner to all eligible members of a benefit group.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 601 et seq.
2. State compliance standards. KRS 205.200(2)
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 601 et seq.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None
STATE BOARD OF ACCOUNTANCY
(Repealer)

201 KAR 1:041. Repeal of 201 KAR 1:040, 201 KAR 1:045 and 201 KAR 1:130

RELATES TO: KRS 325.251(5), 325.270
STATUTORY AUTHORITY: KRS 325.240, 325.270
NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to repeal three (3) administrative regulations that are no longer necessary since those administrative regulations deal with procedures that apply to a paper and pencil licensing examination that is no longer being administered. The paper and pencil examination has been replaced by a computer-based examination and an administrative regulation has been enacted to govern the procedures associated with that examination.

Section 1. The following administrative regulations are hereby repealed:
(1) 201 KAR 1:040, Procedures for conducting examination.
(2) 201 KAR 1:045, Examination subjects, grading and reexamination.
(3) 201 KAR 1:130, Examination application procedure.

This is to certify that the President of the Kentucky State Board of Accountancy has reviewed this administrative regulation, prior to its filing by the Board of Accountancy with the Legislative Research Commission, as required by KRS 325.240.

JOYCE SMITH, CPA, President
APPROVED BY AGENCY: March 18, 2004
FILED WITH LRC: March 25, 2004 at 7 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2004 at 10 a.m., EST 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 May 14, 2004, 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 the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for at 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard C. Carroll, Executive Director, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, phone (502) 595-3037, fax (502) 595-4291.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact: Richard C. Carroll

Provide a brief summary of:
(a) What this administrative regulation does: It repeals 3 current administrative regulations that deal with requirements and procedures to sit for the paper and pencil version of the CPA licensing examination that are no longer necessary since the exam has gone to a computer based format and an administrative regulation regarding that format has been implemented.
(b) The necessity of this administrative regulation: To eliminate administrative regulations that are no longer necessary.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is authorized to promulgate administrative regulations that govern the examination process. A new administrative regulation has been adopted regarding that process; therefore the 3 older administrative regulations are unnecessary.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It eliminates unnecessary administrative regulations.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates interested in sitting for the new computer-based licensing examination.
(f) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The exam candidates will no longer use the procedures for the paper and pencil licensing exam.
(g) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no implementation costs.
(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This question is not applicable since this administrative regulation repeals 3 existing administrative regulations.
(i) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees or funding will be required.
(j) State whether or not this administrative regulation establishes any fees or directly or indirectly increases and fees: This does not establish any new fees or increases.
(k) TIERING: Is tiering applied? Tiering was not used since it applies to all exam candidates.

BOARD OF HAIRDRESSERS AND COSMETOLOGISTS
(New Administrative Regulation)

201 KAR 12:250. School equipment for esthetics course.

RELATES TO: KRS 317B.025(8)
STATUTORY AUTHORITY: KRS 317B.020
NECESSITY, FUNCTION AND CONFORMITY: KRS Chapter 317B requires the board to promulgate administrative regulations establishing standards for the operation of the schools and salons; establish the quality of equipment, supplies, materials, records, and furnishings required in esthetic salons or classrooms; and set the requirements for the proper education and training of students. This administrative regulation establishes those standards and requirements.

Section 1. A school of cosmetology shall not be approved to offer an esthetics course that does not provide and maintain the following minimum equipment and supplies:
(1) A private changing area
(2) A minimum of one (1) fully-equipped machine in the esthetics area.
(3) A chair or stool in the clinic area for every student enrolled.
(4) A minimum of one (1) facial bed or facial chair.
(5) A minimum of one (1) table or utility cart.
(6) One (1) sink in the clinic area with hot and cold running water.
(7) One (1) steamer for hot towels.
(8) One (1) autoclave for sterilizing implements.
(9) A closed cabinet for clean towels and linens.
(10) A closed container for used towels and linens;
(11) One (1) covered waste container;
(12) Supplies including the following:
(a) Seventy (70) percent alcohol at every station;
(b) One (1) makeup station;
(c) Makeup for basic and camouflage application;
(d) Foundation;
(e) Moisturizers;
(f) Powders;
(g) Concealers;
(h) Blushes;
(i) Eye shadows;
(j) Pencils;
(k) Mascaras;
(l) Lipsticks;
(m) Brushes;
(n) Disposable applicators;
(o) Small scissors;
(p) Tweezers;
(q) Cotton swabs;
(r) Tissues;
(s) Eye lashes and adhesive;
(t) Pencil sharpeners;
(u) Makeup palette;
(v) Stainless steel bowls;
(w) Tong;
(x) Makeup remover;
(y) Cleanser;
(z) Mirrors;
(aa) Hand disinfectant;
(bb) Hospital grade disinfectant;
(cc) Antiseptics;
(dd) Sharps containers;
(ee) Gloves;
(ff) Dry sanitizer; and
(gg) Comedone extractors.

Section 2. All cosmetology schools approved for an esthetics course shall have a room to be used for demonstration and study. The room shall include the necessary charts, visual aids, blackboard, and other equipment to carry out the curriculum.

Section 3. A cosmetology school approved to offer an esthetics course shall maintain a ratio of one (1) esthetic instructor or cosmetology/esthetic instructor for every twenty (20) students enrolled in an esthetics course, and this ratio shall be maintained at all times.

BEA COLLINS, Chairman
APPROVED BY AGENCY: April 6, 2004
FILED WITH LRC: April 14, 2004 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the offices of the board, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004, five workdays 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dena Moore, Executive Secretary, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dena Moore, Executive Secretary
(1) Provide a brief summary of:
(a) What this administrative regulation does: Sets the equipment requirements for schools offering the esthetics course.
(b) The necessity of this administrative regulation: To ensure that all schools of cosmetology are qualified to provide education and training to students enrolled in an esthetics course.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statutes require promulgation of administrative regulations to govern the operation of schools of cosmetology and to protect the students enrolled in schools of cosmetology.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Assures that students enrolled in an esthetics course are provided with the proper training and education.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: NA, new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: NA, new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: NA, new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: NA, new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 57 cosmetology schools in the Commonwealth of Kentucky. It is estimated that approximately 30 schools will offer the esthetics course.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: If a cosmetology school offers an esthetics course, they must meet the requirements set forth by administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board is self-sustaining and operates from fees paid by licensees and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees is needed. There has not been a fee increase in over 23 years and service levels are not being maintained.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. Tiering was not applied as all cosmetology schools offering an esthetics course must meet the same requirements.

BOARD OF HAIRDRESSERS AND COSMETOLOGISTS
(New Administrative Regulation)

201 KAR 12:260. License fees, examination fees, renewal fees, restoration fees and miscellaneous fees.

RELATES TO: KRS Chapter 317A
STATUTORY AUTHORITY: KRS Chapter 317A
NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 317A requires the board to establish fees for licenses within the limits established by KRS Chapter 317A. This administrative regulation establishes fees relating to cosmetology and nail technology licenses.
Section 1. The initial license fees shall be as follows:
(1) Apprentice cosmetologist - twenty-five (25) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nails technician - seventy-five (75) dollars;
(4) Apprentice instructor - thirty-five (35) dollars;
(5) Cosmetology instructor - fifty (50) dollars;
(6) Beauty salon - thirty-five (35) dollars;
(7) Nail salon - thirty-five (35) dollars; and
(8) Cosmetology school - $1,500.

Section 2. The annual renewal license fees shall be as follows:
(1) Apprentice cosmetologist - twenty (20) dollars;
(2) Cosmetologist - twenty (20) dollars;
(3) Nails technician - twenty (20) dollars;
(4) Apprentice instructor - twenty-five (25) dollars;
(5) Cosmetology instructor - thirty-five (35) dollars;
(6) Beauty salon - twenty-five (25) dollars;
(7) Nail salon - twenty-five (25) dollars; and
(8) Cosmetology school - $150.

Section 3. Applications for examination required by KRS Chapter 317A shall be accompanied by an examination fee as follows:
(1) Apprentice cosmetologist - seventy-five (75) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nails technician - seventy-five (75) dollars;
(4) Cosmetology instructor - $100;
(5) Out-of-state cosmetologist - $120; and
(6) Out-of-state cosmetology instructor - $200.

Section 4. The fees for retaking an examination or any portion of an examination that an applicant has not successfully completed shall be as follows:
(1) Apprentice cosmetologist - thirty-two (32) dollars;
(2) Cosmetologist - thirty-two (32) dollars;
(3) Nails technician - thirty-two (32) dollars;
(4) Cosmetology instructor - fifty (50) dollars;
(5) Out-of-state cosmetologist - sixty (60) dollars; and
(6) Out-of-state cosmetology instructor - $100.

Section 5. The fee for the restoration of an expired license where the period of expiration does not exceed five (5) years from date of expiration, shall be as follows:
(1) Apprentice cosmetologist - seventy-five (75) dollars;
(2) Cosmetologist - seventy-five (75) dollars;
(3) Nails technician - seventy-five (75) dollars;
(4) Beauty salon - seventy-five (75) dollars;
(5) Nail salon - seventy-five (75) dollars; and
(6) Cosmetology school - $750.

Section 6. Miscellaneous fees shall be as follows:
(1) Demonstration permits for guest artists - fifty (50) dollars;
(2) Certification of licenses - twenty (20) dollars;
(3) Duplicate licenses - twenty-five (25) dollars;
(4) Reciprocity application - $100;
(5) Student enrollment permit - twenty (20) dollars;
(6) Inactive licenses for cosmetologist, nail technician and cosmetology instructors - twenty (20) dollars; and
(7) Continuing education provider application - $300.

BEA COLLINS, Chairman
APPROVED BY AGENCY: April 6, 2004
FILED WITH LRC: April 14, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the offices of the board, 111 St. James Court, Suite A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2004 five working 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 canceled. The 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dena Moore, Executive Secretary, Kentucky State Board of Hairdressers and Cosmetologists, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dena Moore, Executive Secretary

(1) Provide a brief summary of:
(a) What this administrative regulation does: Sets license fees, examination fees, renewal fees, restoration fees and miscellaneous fees charged by the board.
(b) The necessity of this administrative regulation: KRS Chapter 317A is amended to require the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges. Since the board is an independent agency, reasonable fees and charges must be collected to continue to protect the health and safety of the public by enforcement of its statutes and administrative regulations. 
(c) How this administrative regulation conforms to the content of the authorizing statutes: The statute was amended to require the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sets the fees and charges for license fees, examination fees, renewal fees, restoration fees and miscellaneous fees charged by the board.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A - new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A - new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: N/A - new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 17,000 licensed cosmetologists; 2,000 nail technicians; 700 nail technicians; 3,000 students; 5,100 beauty salons; and 432 nail salons.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: All licensees and applicants will be impacted due to the increase in the fees charged by the board.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board is self-sustaining and operates from fees paid by licensees and applicants.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: This administrative regulation establishes fees collected by the board, there would be no cost in implementing the administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, this administrative regulation directly increases fees. The board has not had an increase in fees since 1980 and cannot continue to protect the health and safety of the public by enforcement of its statutes and administrative regulations without an increase.
(9) TIERING: Is tiering applied? No. Tiering was not applied as all licensees and applicants pay the same fee.
BOARD OF LICENSURE FOR MASSAGE THERAPY
(New Administrative Regulation)

201 KAR 42:035. Application process and curriculum requirements.

RELATED TO: KRS 309.358, 309.359, 309.360
STATUTORY AUTHORITY: KRS 309.355(3)-309.360
NECESSITY, FUNCTION, AND CONFORMITY: Requires the board to promulgate administrative regulations to implement KRS 309.350 to 309.364. KRS 309.358 and 309.360 require the board to issue a license as a massage therapist to a qualified applicant, and after June 24, 2005, requires that the board may issue a license to an applicant. This administrative regulation establishes the application process and curriculum requirements for licensure.

Section 1. An applicant for licensure as a massage therapist shall:
(1) File a completed, signed, and dated application and required documentation with the board, meeting the requirements set forth in KRS 309.358 and 309.360; and
(2) Pay by certified check or money order an application fee as established by 201 KAR 42:090, made payable to the Kentucky State Treasurer.

Section 2. To comply with KRS 309.358(1)(d) and 309.360(1), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows the completion of at least 500 classroom hours, consisting of the following minimum requirements:
(1) 100 hours of sciences to include anatomy, physiology, pathology and kinesiology;
(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:
   (a) Gliding strokes;
   (b) Kneading;
   (c) Direct pressure;
   (d) Deep friction;
   (e) Joint movement;
   (f) Superficial warming techniques;
   (g) Percussion;
   (h) Compression;
   (i) Vibration;
   (j) Jostling;
   (k) Shaking; and
   (l) Rocking; and
(3) 200 hours of approach to the business of massage, including:
   (a) Contraindications;
   (b) Benefits;
   (c) Business;
   (d) History;
   (e) Ethics;
   (f) Legalities of massage; and
   (g) Courses designated to meet the school's specific program objectives.

Section 3. To comply with KRS 309.360(4), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows completion of 200 hours of formal training, which shall include:
(1) 100 hours of sciences to include anatomy, physiology, pathology and kinesiology;
(2) Ninety eight (98) hours of massage or bodywork theory and application; and
(3) Two (2) hours of ethics.

Section 4. To comply with KRS 309.358(2)(d), an applicant shall submit to the board, at the time of application, a curriculum statement, official transcript or certificate that shows the completion of at least 600 classroom hours, consisting of the following minimum requirements:
(1) 200 hours of sciences to include anatomy, physiology, pathology, and kinesiology;
(2) 200 hours of massage or bodywork theory, technique, and practice focusing on:
   (a) Gliding strokes;
   (b) Kneading;
   (c) Direct pressure;
   (d) Deep friction;
   (e) Joint movement;
   (f) Superficial warming techniques;
   (g) Percussion;
   (h) Compression;
   (i) Vibration;
   (j) Jostling;
   (k) Shaking; and
   (l) Rocking; and
(3) 200 hours of approach to the business of massage, including:
   (a) Contraindications;
   (b) Benefits;
   (c) Business;
   (d) History;
   (e) Ethics;
   (f) Legalities of massage; and
   (g) Courses designated to meet the school's specific program objectives.

Section 5. A person who is licensed, certified or registered in another state or country shall provide evidence of training and supervision that meets the requirements of KRS 309.358 and this administrative regulation.

Section 6. Appeals. An applicant may appeal for a board decision regarding his or her licensure application in accordance with KRS Chapter 13B.

(2) This material may be inspected, copied; or obtained, subject to applicable copyright law, at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the Chair of the Kentucky State Board of Licensure for Massage Therapy has approved this administrative regulation prior to its filing by the Kentucky State Board of Licensure for Massage Therapy with the Legislative Research Commission as required by KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364.

THERESA M. CRISPER, Chair
APPROVED BY AGENCY March 8, 2004
FILED WITH LRC March 17, 2004 at 2 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2004, at 1 p.m., at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five working 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 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. 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristen Webb, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen M. Webb

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process and curriculum requirements for licensure as a massage therapist.

(b) The necessity of this administrative regulation: KRS 309.356(3) requires the Board of Licensure for Massage Therapy to carry out the provision of licensure of massage therapists and KRS 309.358 and 309.360 require the board to establish an application process.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation establishes explicit guidelines to carry out the provision of KRS 309.358 and 309.360.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes explicit guidelines enabling this board to implement KRS 309.356 and 309.360.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statute:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals planning to practice massage therapy; approximately 3,031 individuals currently practicing massage therapy; approximately 1,000 students currently enrolled in schools of massage therapy; and educational programs that provide the required massage therapy training.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Current and future massage therapists are given a mechanism for application as required under KRS 309.050 through 309.394. The administrative regulation and state requirements for licensure will be taught to students, ensuring each candidate for licensure understands the required state law and fees necessary for licensure under KRS 309.357. Schools should not find any additional expense due to this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: Initial cost to implement this administrative regulation is for posting, printing and mailing it is estimated the total set of new administrative regulations for the practice of massage therapy. This application process provides for fees to be paid to the board and brings in revenue. This revenue cannot be collected with printing costs of 2 page applications, for an estimated 1,000 applications who will use one or the other form in the second year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of the funding to be used for implementation enforcement is the proposed licensing fees. Proposed initial licensing fee is $125. A 2002 Opinion Research Corporation (ORC) Caravan survey by Decision Diagnostics estimated 3,031 practicing massage therapists in Kentucky. An estimated 1,000 will apply for licensure in the first year, for a fund of $125,000. The majority is estimated to apply near the end of the grandfathering period, bringing another 2,000+ application fees for a second-year income of $250,000. It is to be noted that the assembly of this proposed administrative regulation presented no cost to the state prior to filing with the Compiler.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: KRS 309.358 and 309.360 require an application process for licensure as a massage therapist. This new administrative regulation creates this process does not require any new funding beyond what will be realized by the application fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees, but does reference fees as created under 201 KAR 42:020.

(9) TIERING: Is tiering applied? Tiering does not apply in this regulation regarding fees, however, grandfathering provisions and curriculum requirements are tiered based upon the time frame applicant applies for licensure and the number of years and experience of a licensee.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Repealer)


RELATES TO: KRS 150.175
STATUTORY AUTHORITY: KRS 150.175(1)(aa), 150.195
NECESSITY, FUNCTION AND CONFORMITY: KRS 150.195 authorizes the department to establish requirements for hunting and fishing licenses. KRS 150.175(1)(aa) authorizes the department to issue a senior and disabled combination hunting and fishing license. 301 KAR 5:030 was promulgated in 1998 and establishes the requirements for obtaining a senior and disabled combination license. Therefore, 301 KAR 3:028 is no longer necessary because the information contained in it is contained in 301 KAR 5:030.

Section 1. 301 KAR 3:028, Applying for disability hunting and fishing exemption, is hereby repealed.

C. THOMAS BENNETT, Commissioner
BEN FRANK BROWN, Chairman
W. JAMES HOST, Secretary
APPROVED BY AGENCY: December 8, 2003
FILED WITH LRC: April 14, 2004 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2004 at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business 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 canceled. 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 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 prior to June 1, 2004. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Ellen Benzing, Attorney, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation repeals 301 KAR 3:028.

(b) The necessity of the administrative regulation: This repealer administrative regulation is necessary because the information found in 301 KAR 3:028 is located in 301 KAR 5:030. It is not necessary to have two administrative regulations that cover the same material.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.195(1) authorizes the department to promulgate administrative regulations for the design, issuance, distribution and other matters relating to all licenses and permits.
issued by the department. KRS 150.175(1)(aa) authorizes the department to issue disability licenses. The procedures for applying and receiving a senior/disability permit are established in 301 KAR 5.030.

(1) How will this administrative regulation assist in the effective administration of the statutes? This administrative regulation will repeal an administrative regulation that is no longer necessary because it is redundant.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.

(a) How the amendment will change the existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How does the amendment conform to the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: No persons will be affected by the repeal of 301 KAR 3:026 because the procedures for acquiring a disability license are already established in 301 KAR 5.030.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: See (3) above.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.

(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: Because there is no cost associated with the promulgation of this administrative regulation, there is no funding source.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.

(9) TIERING: Is tiering applied? Tiering was not used because this is a repealer administrative regulation and its repeal will not have an impact on person or create a tiering affect.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(New Administrative Regulation)

401 KAR 49:080. Solid waste grant funds and solid waste collector and recycler registration.

RELATES TO: KRS 224.43-310, 224.43-315, 224.43-345, 224.43-505

STATUTORY AUTHORITY: KRS 224.43-345, 224.43-505

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes administrative procedures concerning the area solid waste management plans described in KRS 224.43-345 and the Kentucky Pride Fund described in KRS 224.43-505.

Section 1. Definitions. (1) "City street cleanup" means the cleanup of litter along one-half (1/2) of a city's total street miles.

(2) "County" means the governing body of a solid waste management area.

(3) "Illegal dump" means any facility or site for the disposal of solid waste that does not have a valid permit issued by the cabinet or does not meet the standards established by the cabinet and is equal to or greater than two (2) consolidated cubic yards of solid waste.

(4) "In-kind services" means the value of noncash contributions provided by parties in the form of real property, equipment, supplies, and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(5) "Public road cleanup" means the cleanup of litter along one-third (1/3) of the total public road miles in the solid waste management area, excluding total city street miles.

(6) "Recycler" means the following:

(a) Any person who operates a business for the purpose of reselling recyclables collected from the municipal solid waste stream or

(b) A recycling program operated by a municipality for the purpose of collecting recyclables from the solid waste stream.

(7) "Solid waste collector" means a person who provides collection of municipal solid waste, including collection for the purpose of recycling.

Section 2. Waste Collector and Recycler Registration and Reporting. (1) By February 1 each year, each solid waste collector shall register with each county in which they collect waste.

(2) By February 1 each year, each solid waste collector shall report collection totals for the previous calendar year to each county in which they provide service.

(3) By February 1 each year, each recycler shall register with each county in which they collect recyclables.

(4) By February 1 each year, each recycler shall report recycled totals for the previous calendar year to each county in which they provide service.

(5) Solid waste collectors and recyclers required to register and report, pursuant to KRS 224.43-315(2) and (3), and this administrative regulation, shall utilize DEP Form #5033 "Municipal Solid Waste Collector (MSW) and Recycler Registration and Reporting Form" incorporated by reference in Section 7 of this administrative regulation.

Section 3. Litter Abatement Funding. (1) Funding to complete the litter cleanup requirements established in KRS 224.43-345 is available to the counties and those incorporated cities that provide garbage collection service, either directly by the city or the county, or by contract between the municipality and a registered solid waste collector.

(2) Litter abatement funding shall be utilized for direct expenses associated with litter abatement activities along public roads. Direct expenses include staff time, supplies, contract costs, expenses related to the operation of equipment, actual disposal costs incurred, and education activities focusing on public road cleanup. Direct expenses do not include the purchase or lease of a motor vehicle.

(3) All recipients of litter abatement funds shall provide a twenty-five (25) percent match to the litter abatement funding in accordance with KRS 224.43-505(3). The match may be fulfilled through in-kind services.

(4) Counties and cities must enter an agreement with the cabinet pursuant to KRS 224.43-505(2)(c)3d to be eligible for funding.

Section 4. Litter Abatement Activities. (1) Three (3) public road cleanups shall be performed annually by the county.

(2) Two (2) city street cleanups shall be performed annually by incorporated cities receiving litter abatement funds or by the county, if the incorporated city does not receive funding.

(3) Counties shall report to the cabinet on litter abatement activities in the annual report required by KRS 224.43-310(5).

(4) Incorporated cities that enter into an agreement with the cabinet to receive a portion of a county's litter abatement funding shall report annually to their county by February 1, demonstrating that the city used the litter abatement funds it received appropriately pursuant to Section 3(2) of this administrative regulation.

Section 5. Illegal Dump Remediation Costs Reimbursement. (1) Funding for illegal dump remediation established in KRS 224.43-505 is available to eligible counties. The cabinet shall reim-
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Nini Hughes

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes procedures concerning the area solid waste management plan described in KRS 224.43-345 and the Kentucky Pride Fund described in KRS 224.43-505.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to meet the requirements of KRS 224.43-345 and 224.43-505.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides procedures for litter abatement and the cleanup of illegal dumps and establishes requirements for the distribution of Kentucky Pride Fund grants toward these efforts required by KRS 224.43-345 and 224.43-505. This regulation also provides procedures for solid waste collectors and recyclers to register with and report to the counties in which they operate on an annual basis, and incorporates by reference a form for such registration and reporting.
(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides procedures for KRS 224.43-345 and KRS 224.43-505.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the context of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 476 solid waste collectors and 1,243 recyclers who are required to register with each county in which they work. This administrative regulation will affect 120 counties and 422 incorporated cities receiving funds from the cabinet for litter abatement and the cleanup of illegal dumps.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This new administrative regulation requires recyclers and solid waste collectors to register and report annually to each county in which they operate, using the incorporated form "Municipal Solid Waste Collector (MSW) and Recycler Registration and Reporting Form, (September 2003). This new administrative regulation provides guidelines for the funding of litter abatement activities. Counties will be allotted funds to promote litter abatement activities and education. This new administrative regulation also provides the requirements for the reimbursement of costs for the remediation of illegal dumps.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Approximately 4 positions are required for the implementation of this administrative regulation, equivalent to $200,000 per year.
(b) On a continuing basis: 4 positions will be needed on a continual basis for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding for the implementation and enforcement of this regulation will be the Kentucky Pride Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

LAUJANNA S. WILCHER, Secretary
APPROVED BY AGENCY: April 13, 2004
FILED WITH LRC: April 14, 2004 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 25, 2004 at 10 a.m. (Eastern time) at the Capitol Annex Building, Room 125. Individuals interested in being heard at this hearing shall notify this agency in writing by May 18, 2004, five workdays 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. Written comments shall be accepted until June 1, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nini Hughes, Planning Section Supervisor, PPA Branch, 14 Reilly Road, Frankfort, Kentucky 40601, phone (502) 564-6716 ext. 628, fax (502) 564-3492.
VOLUME 30, NUMBER 11 – MAY 1, 2004

(9) TIERING: Is tiering applied? No tiering is applied. This administrative regulation applies to counties in the Commonwealth of Kentucky, along with all recyclers and solid waste collectors.

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
2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect the governing bodies responsible for solid waste management services.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This regulation relates to the county and city providers of solid waste management service, authorized by KRS 224.43-435 and 224.43-505.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative 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 (+/-): see below.
Expenditures (+/-): see below.

Other Explanation: Counties are allotted a percentage of the Kentucky Pride Fund money according to KRS 224.43-505. Funds are to be used for litter abatement activities and the assessment and remediation of illegal dumps. Counties are required to provide a 26% match to their allotted funds, according to the statute. Counties are required to meet eligibility requirements including employment of a solid waste coordinator, with enforcement powers.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:002. Definitions for 405 KAR Chapter 5.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes definitions of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.
(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.
(3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water or weathering processes, form acids that may create acid drainage.
(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas and processing plants.
(5) "Backfill" means excavated overburden material used to regrade a mined area.
(6) "Cabinet" is defined in KRS 350.010(10).
(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce runoff velocity for determining erosion.
(8) "Clay" means a natural substance or soft rock which, when finely ground and mixed with water, forms a pasty, moldable mass that preserves its shape when air-dried; the particles soften and coalesce upon being highly heated and form a stony mass upon cooling.
(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.
(10) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or 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 this land use category.
(11) "Department" means the Kentucky Department for Natural Resources.
(12) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released and processing plant and stockpile areas have been moved.
(13) "Diversion ditch" means a channel constructed to direct water from one location to another.
(14) "Division" means the Division of Field Services of the Kentucky Department for Natural Resources.
(15) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, CaMg (CO₃)₂. Many limestones contain small amounts of dolomite; however, the term dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.
(16) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.
(17) "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two (2) or more different habitat types occurring in close proximity to each other. Where two (2) habitats meet is referred to as an "edge".
(18) "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.
(19) "Ephemeral stream" means a stream which only flows 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.
(20) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.
(21) "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: woodlots or forested areas, scrub brush areas, grass legume or open areas, and wetland or open water areas arranged in a manner to promote edge effect for wildlife.
(22) "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.
(23) "Fluorspar " means an ore of the mineral Fluorite CaF₂. This occurs in veins and as bedding replacements found in West-
ern Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.

(24) “Forest land” means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees.

(25) “General permit” means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(26) “Gravel” means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders, a naturally occurring aggregate.

(27) “Ground cover” means the areas of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(28) “Ground water” means water which is in the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.

(29) “Growing season” means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(30) “Highwall” means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.

(31) “Hollowfill” means a fill structure placed in a hollow 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) “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 requirement of KRS Chapters 350 through 353 or 405 KAR Chapters 1 through 30; which condition, practice, or violation 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 not expose himself to the danger during the time necessary for the abatement.

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

(34) “Industrial/commercial land use” means lands used for:
(a) The extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included;
(b) The retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included.

(35) “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 throughout the calendar year; or
(b) A stream, or reach of stream, that is below the local water table for at least some part of the year, and obtains its flow from both surface water and ground water discharge. This term does not include ephemeral streams.

(36) “Land use” means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

(37) “Limestone” means a crystalline sedimentary rock that is primarily composed of the mineral calcite CaCO₃. However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly calcite or dolomite, but may contain small amounts of iron carbonates ( siderite).

(38) “Mast” means nuts, acorns, and fruit produced by certain woody plant species.

(39) “Mineral operation” means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incidental to the reclamation of the mine or dredging operation as required by this title. This term does not include coal mining or oil shale mining.

(40) “Mineral operator” means any person, partnership, or corporation engaged in mineral operations.

(41) “Mineral permittee” means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(42) “Natural drainways” means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

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

(44) “Noxious plants” means species that have been included on state and federal lists of noxious plants.

(45) “Outslope” means the face of the spoil, natural ground, or embankment sloping downward from the highest elevation to the lowest elevation.

(46) “Outstanding resource waters” means surface waters designated by the cabinet, pursuant to 401 KAR 5:031, Section 7.

(47) “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.

(48) “Perennial stream” means a stream, or stream reach, that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

(49) “Permanent impoundment” means an impounded body of water, that is formed in the pit during mining or retained by a containment embankment or dike, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(50) “Permit” means written approval issued by the cabinet to conduct mineral operations.

(51) “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 mineral operations under that permit.

(52) “pH” means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

(53) “PLS” means pure live seed.

(54) “Point source” is defined in 401 KAR 5:050.

(55) “Recreation land use” 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.

(56) “Residential land use” means tracts employed for single and multifamily 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.
"Rocks" means haul roads and access roads constructed, used, reconstructed, improved or maintained for use in mining and stockpiling finished products, within permit boundaries. The term excludes any roadways located in the mining pit area.

"Runoff" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

"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 engineering practices.

"Sand" means a sedimentary rock type that implies a loosely compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

"Sediment" means undissolved organic and inorganic material transported or deposited by water.

"Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

"Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.

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

1. Cause the harm, or
2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.

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

"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. It may also be expressed as a percent or in degrees.

"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 the A horizon and above the B horizon. The E horizon is most commonly differentiated from the overlying A horizon by a lighter color and generally a measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below 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 biological activity.

"Soil" means overburden which has been removed during mineral operations.

"Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, ripping or, by vegetation.

"Stream buffer zone" means the mineral area operated during mining, including haul road construction.

"Strip mining" is defined in KRS 350.010(2).

"Surface disturbance of dredging river or creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

"Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction 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 used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

"Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharge is not considered to be surface waters of the Commonwealth.

"Suspended solids" means organic or inorganic materials carried or held in suspension in water which will remain on a 0.45 micron filter.

"Tar sand or rock asphalt" means a porous, consolidated or unconsolidated sand or sandstone whose interstices contain asphalt or bitumen.

"Temporary mineral operation" means a mineral operation that operates for a total of six (6) months or less at a location.

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

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

"Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurried or otherwise transported from the processing facilities or preparation plants of any kind.

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

"Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

"Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water 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 the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

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

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

"Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS 146.241.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training Room) of the Department of Natural Resources at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by May 20, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on June 1, 2004. Send written notification of your intent to be heard at the hearing, or your
written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five working days prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5698, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes definitions of certain essential terms used in 405 KAR Chapter 5.
(b) The necessity of the administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1985, which were amended on September 12, 2003 notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each state agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation defines essential terms used in 405 KAR Chapter 5 for noncoal mineral operations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluorospaer and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995, and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002, and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant cost change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not directly or indirectly establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied because these definitions must apply equally to all noncoal mineral operations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:032. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.028 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation specifies certain information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation shall
pertain to any person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements. A person or mineral operator desiring a permit shall submit a preliminary map at a scale of one inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas; including but not limited to, location of access roads, spoil or waste areas, and sedimentation ponds. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons including appropriate representatives of the applicant.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Natural Resources, Division of Field Services, Noncoal Review Branch, #2 Hudson Hollow, Frankfort, Kentucky 40601, or to the Division of Field Services at one (1) of the following regional offices:

(a) London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-5011;
(b) Madisonville Regional Office, 625 Hospital Drive, Madisonville, Kentucky 42431-1883;
(c) Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1229;
(d) Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9531; or
(e) Prestonsburg Regional Office, 3140 South Lake Drive, Suite 6, Prestonsburg, Kentucky 41653-1410.

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including his phone number;
(b) The registered agent for service of process, if applicable, including his phone number;
(c) Any owners, partners, or if a corporation, any officers or stockholders owning ten (10) percent or more stock;
(d) The project engineer, along with his registration number and name of associated firm;
(e) The company and engineer in which correspondence concerning the subject permit shall be addressed to;
(f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;
(g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and
(h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, the applicant shall list the names.

(3) The applicant shall specify the applicant’s legal structure.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, the applicant shall specify the county and state where the name is registered.

(5) The applicant shall list previous Kentucky permits held by the applicant or any individual, partnership or corporation associated with the applicant.

(6) The applicant shall provide the name of the contact person at the site, including his phone number.

(7) The applicant shall specify the type of application, along with the permit number.

Section 3. Bond Information. If bond is required under 405 KAR 5:082, the following information shall be provided in the permit application:

(1) The bond amount per acre;
(2) The total amount of bond; and
(3) The bond type:
   (a) If a surety is used, the applicant shall provide the bond number and surety.
   (b) If a certificate of deposit is used, the applicant shall provide the bank name and CD number.
   (c) If a letter of credit is used, the applicant shall provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the owner, acknowledging approval of the activity.

(2) Except where mine access roads or haul roads join the right-of-way, if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and any required approvals from the appropriate agency or local government with jurisdiction over the road.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee will have no continuing maintenance responsibility after permit release shall be required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for any disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or any other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, the applicant shall state this in the application.

(8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6) shall be required.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representations, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map which shall:

(1) Delineate the proposed permit area and any areas overlying proposed underground workings;
(2) Be of a scale of not more than one (1) inch to 400 feet;
(3) Show all other mine operations within 500 feet of the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries;
(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners;
(5) Delineate all proposed access roads onto the proposed mineral operation;
(6) Show the site slope;
(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 5:029 and 401 KAR 5:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, Wildlife Management Areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary;
(8) Locate any sites listed on the National Register of Historic - 2425 -
Places and any known archaeological sites;

(9) Delineate any wetlands which may be affected by the proposed mineral operation;

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation;

(11) Show any proposed pit area, sediment storage areas, and any other facilities and features related to the mineral operation;

(12) Provide a north point arrow;

(13) Contain a legend which shall:
(a) Provide the company name;
(b) Provide the application number;
(c) Provide the county and quadrangle names;
(d) Provide the site coordinates;
(e) Provide the site address;
(f) Provide the map scale and contour interval;
(g) Provide a description of the site location including:
   1. The nearest stream;
   2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operations features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected;

(j) Specify the deposit to be mined and;

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:
(a) The engineer's registration number; and
(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:
(a) Latitude and longitude;
(b) The nearest community;
(c) The name of the nearest stream;
(d) The nearest public road intersection; and
(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur.

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance;

(3) Specification of the mineral to be extracted.

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation.

(5) Specification of whether any active discharges exist which may affect the proposed mineral operation. If so, provide the following information:
(a) The pH of the discharge; and
(b) The source of the discharge.

(6) Specification of whether underground workings will be encountered, and the distance, in feet, to the nearest active deep mine.

(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural Resource Information. The applicant shall specify whether any sites listed on the National Register of Historic Places or any known archaeological sites exist within, or adjacent to, the proposed permit boundary.

Section 11. Environmental Resources Information. (1) The applicant shall indicate whether there are any Wildlife Management Areas, wildlife refuges, national preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them on the map.

(2) The applicant shall indicate whether disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(3) The applicant shall indicate whether there are any outstanding resource waters, pursuant to 401 KAR 5:026 and 401 KAR 5:031, within the vicinity of the proposed mineral operation. If so, the applicant shall delineate these waters on the map.

Section 12. Surface Water Quantity and Quality Protection Plan. The permit application shall contain a surface water quantity and quality protection plan which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 405 KAR 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings, and specifications for each structure to include:
(a) The structure number;
(b) The number of acres to be disturbed within the drainage area;
(c) The number of acres in the drainage area;
(d) Sediment storage capacity;
(e) Storage capacity at the principal spillway;
(f) Storage capacity at the emergency spillway;
(g) Spillway capacities;
(h) Structure height measured from the downstream toe; and
(i) All other engineering designs, dimensions and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment will be removed and disposed.

(3) The applicant shall state whether any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate any other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment which demonstrate compliance with 405 KAR 5:055.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:062.
Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:
(a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary;
(b) Specifies the intended postmining land use for the proposed permit area; and
(c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.
(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:002.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:070, and is consistent with 405 KAR 5:065 and that provides the following information:
(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium.
(2) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre).
(3) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre).
(4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.
(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.
(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky-registered professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) An applicant for a new permit required under KRS Chapter 350, shall publish at least once, a public notice of his application for that permit. The publication shall be made by advertisement in the newspaper of largest bona fide circulation in the county where the proposed mining site is located. If the proposed mining site is in more than one (1) county, publication shall be required in the newspaper of largest bona fide circulation in each county.
(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.
(3) The public notice of the intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals", and may be in a manner and form prescribed by the department and shall include, though not be limited to, the following:
(a) Name and address of the applicant;
(b) Permit application number;
(c) The location of the proposed mining site; and
(d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mining operations.
(4) The applicant for a new permit required by KRS Chapter 350 shall establish the date and place at which the "Notice of Intention to Mine Noncoal Minerals" was published, by attaching to his application proof satisfactory to the cabinet of the time, place, and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained if the mineral permittee desires to modify his mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:
(1) The application for revision shall be filed with the cabinet and approved prior to the date on which the mineral permittee expects to revise the mineral operation;
(2) The term of a permit shall remain unchanged by a revision; and
(3) The application for revision shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral operations under the permit. Applications for amendment may be filed at any time during the term of the permit.
(1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit under this administrative regulation.
(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:082, for each additional acre or fraction of an acre.

Section 24. Permit Renewals. Any valid permit issued pursuant to 405 KAR Chapter 5 shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit.
(1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.
(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized under the existing permit, the portion of the application which addresses any new land areas shall be subject to all requirements of 405 KAR Chapter 5, and a new original permit application shall be required for these areas.
(3) The permit renewal shall be issued if the following requirements are met:
(a) The application for renewal shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2;
(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including but not limited to:
   1. An updated operational plan current to the date of request for renewal; and
   2. Specification of the status and extent of all mineral operations on the existing permit area;
   3. The present mineral operation is in compliance with KRS Chapter 350 and 405 KAR Chapter 5; and
   4. The mineral permittee shall provide any additional bond required in accordance with 405 KAR 5:082.

Section 25. Permit Succession. (1) There shall be no succession on the permitted area without the prior written approval of the cabinet.
(2) The initial mineral permittee shall notify the cabinet, in writing, of any proposed succession.
(3) The cabinet may release the first mineral operator from reclamation responsibility under 405 KAR Chapter 5 as to that particular mineral operation, however:
(a) There shall not be release until the successor mineral operator has been issued a permit and has otherwise complied with the requirements of 405 KAR Chapter 5; and
(b) The successor shall immediately assume, as a part of his obligation under 405 KAR Chapter 5, all liability for the reclamation of the area affected by the former permitted mineral operation.
(4) If the cabinet has given its prior written approval to the succession, a successor in interest to a mineral permittee who applies for a successor permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's
application is granted or denied.

(5) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

(a) To technically withdraw the permit application;
(b) To deny the permit application; or
(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date when the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall set forth the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet he may, by written notice, request a hearing by the cabinet, pursuant to 405 KAR 5:095.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. No application for a permit and no mineral operation shall be approved, unless the application affirmatively demonstrates and the cabinet determines on the basis of information set forth in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that the applicant has complied with all requirements of 405 KAR Chapter 5.

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5.

(3) The proposed mineral operation will not constitute a hazard to, or do physical damage to, life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation which constitutes the cause of the hazard or damage shall be deleted from the application and the mineral operation.

(4) The proposed mineral operation will not adversely affect natural hazard lands or a wild river established pursuant to KRS Chapter 146.

(5) The proposed mineral operation will not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area.

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

1. Where mine access roads or haul roads join the right-of-
way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby will be protected;

(e) Not within the distances specified in Section 5 of this administrative regulation, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an allowance, as required by Section 5 of this administrative regulation. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver. Waivers obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 382.110 or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required under Section 5 of this administrative regulation, have been obtained and authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation will be conducted in compliance with KRS Chapter 350 and 405 KAR Chapter 5.

(2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and 405 KAR Chapter 5 and any conditions of the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters 1, 3, and 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for any mineral operation or any surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless:

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum determined by the cabinet after the Division of Abandoned Mine Lands has prepared an estimate of the cost to reclaim the lands, based upon site specific conditions.

(4) If the applicant, miner operator, any subcontractor, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied; however, a mineral permittee shall not be relieved of responsibility with respect to any permit issued to him.

(5) If the cabinet determines that any activity of the applicant regulated pursuant to 405 KAR Chapter 5 is currently in violation of KRS Chapters 149, 151, 224, 350 through 354, 400 KAR Chapters 1 through 3, 401 KAR Chapter 4 through 100, 402 KAR Chapter 3, or 405 KAR Chapters 1 through 30, then the cabinet shall re-
quire the applicant, before the issuance of the permit, to either:
(a) Submit proof which can be substantiated by the cabinet that
the violation has been corrected, or is in the process of being cor-
rected in good faith; or
(b) Establish, by proof that can be substantiated by the cabinet
that the applicant has filed and is presently pursuing, a good faith
administrative or judicial appeal to contest the validity of the
violation.
(6) If the applicant submits the proof specified under subsec-
tion (5) of this section, then the cabinet may issue the permit with
an appropriate condition that either the reclamation work be con-
tinued in good faith until completion or that the applicant loses his
right to file an action contesting the violation that the violation be corrected in
a specified time. Failure to comply with any conditions shall be
grounds for revocation of the permit.
(7) If the applicant disagrees with the cabinet's determination
under this section, then he has the right to request an administra-
tive hearing pursuant to 405 KAR 5:095.
Section 30. Permit Conference and Public Comment. (1) Pro-
cedures for requests. Any person whose interests are or may be
adversely affected by the issuance of the application, including the
officer or head of any federal, state or local government agency or
authority, may request that the cabinet hold an informal conference
on any application for a permit. The request shall:
(a) Briefly summarize the issues to be raised by the requestor
at the conference.
(b) Be filed with the cabinet within fifteen (15) days of the
newspaper advertisement.
(2)(a) The conference shall be held at the Division of Field
Services.
(b) The conference shall be held within fifteen (15) days of the
date of the request. The date, time, and location of the conference
shall be sent to the applicant and parties requesting the conference.
(c) 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.
(d) If all parties requesting the conference stipulate agreement
before the requested conference and withdraw their requests, the
conference shall not be held.
(e) All comments and evidence shall be taken into considera-
tion by the Division of Field Services in Frankfort before a final
decision is made on the disposition of the application.
(f) The record shall be maintained and shall be accessible
to the parties during the life of the mineral operation.
(3) Any person whose interests are or may be adversely af-
fected by the officer or head of any federal, state or local government agency or
authority, may submit written comments to the cabinet.
Section 31. Existing Mineral Operations. (1) Existing mineral
operations that were not permitted or regulated prior to the effective
date of this administrative regulation shall obtain a permit
within 180 days of the effective date of this administrative regula-
tion.
(2) The cabinet may grant limited variances from the distance
limitations of Section 27(6) of this administrative regulation where
an existing disturbance within those limits was made prior to the
effective date of this administrative regulation by an existing
mineral operation that was not permitted or regulated prior to the ef-
efective date of this administrative regulation. These variances shall
only be granted when no practical and reasonable remedial com-
pliance measure can be identified.
(3) The distance limitations of Section 27(6) of this administra-
tive regulation shall not apply where lesser distance limitations
have been approved in a valid permit issued prior to the effective
date of this administrative regulation. The distance limitations es-
blished in those permits shall continue to apply.
Section 32. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference: "Application for Surface Distur-
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Department for Natural Re-
sources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday
through Friday, 8 a.m. to 4:30 p.m.
LAJJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this proposed administrative regulation shall be
held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training
Room) of the Department for Natural Resources at 2 Hudson Hol-
low, Frankfort, Kentucky. Individuals who intend to be heard at this
hearing shall notify this agency in writing by May 20, 2004, five
workdays prior to the hearing, of their intent to attend. If no notifi-
cation of intent to attend 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. A transcript of the hearing will
not be made unless a written request for a transcript is made. If
you request a transcript, you may be required to pay for it. If you do
not wish to be heard at the hearing, you may submit written com-
ments on the proposed administrative regulation. Written com-
ments shall be accepted until 4:30 p.m. on June 1, 2004. Send
written notification of your intent to be heard at the hearing, or your
written comments on the proposed administrative regulation, to
the contact person listed below. The hearing facility is accessible to
persons with disabilities. Requests for reasonable accommoda-
tions, including auxiliary aids and services necessary to participate
in the hearing, may be made to the contact person at least five
workdays prior to the hearing.
CONTACT PERSON: Jim Villines, Manager, Program Devel-
opment and Coordination Branch, Department for Natural Re-
sources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321,
phone (502) 564-6940, fax (502) 564-5698, e-mail
Jim.Villines@ky.gov.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Jim Villines, (502) 564-6940
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes permitting requirements for noncoal
mineral operations.
(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary to implement an effective program
to control the effects of noncoal mineral mining operations, in
accordance with KRS 350.029, 350.240, and the Interstate Mining
Compact, as modified at KRS 350.300. It is also necessary to com-
ply with 2004 HJR 98, which requires the cabinet to promulgate
administrative regulations identical to those effective on February
22, 1995, which were amended on September 12, 2003 notwithstanding
findings of deficiency by 2 legislative subcommittees and
were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: The authorizing statutes call for the
effective control of surface disturbances in connection with mining
as defined by the Interstate Mining Compact. In Article III of the
Compact, each party state agrees to establish an effective program
for the conservation and use of mined land, by the establishment of
standards, enactment of laws, or the continuing of the same in
force, to accomplish:
1. The protection of the public and the protection of adjoining
and other landowners from damage to their lands and the struc-
tures and other property thereon resulting from the conduct of
mining operations or the abandonment or neglect of land and
property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other
mining wastes in ways that will reduce adverse effects on the eco-
nomic, residential, recreational or aesthetic value and utility of land
and water.
3. The institution and maintenance of suitable programs for
adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil
pollution resulting from mining present, past and future. This ad-
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:036. Signs and markers.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION AND CONFORMITY: KRS 350.028
authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes provisions concerning signs and markers for noncoal mineral operations.

Section 1. General. (1) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material.

(2) Signs and other markers shall be maintained by the mineral permittee during all mineral operations to which they pertain, and shall be kept legible and visible and shall conform to all local ordnances and codes.

(3) Signs constructed pursuant to this administrative regulation shall be constructed of durable material, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways.

(2) Signs shall clearly identify the name, business address, and telephone number of the mineral permittee and identification numbers of current mineral operation permits or other authorizations to operate.

(3) The signs shall not be removed until after release of permit.

(4) Failure to post the signs shall be grounds for revocation of the permit.

(5) The permit boundaries shall be clearly marked by durable and easily recognized markers for the purposes of the permit walk.

Section 3. Stream Buffer Zone Markers. Except where specifically approved, lands within 100 feet of perennial and intermittent streams shall not be disturbed. These areas shall be designated as buffer zones, and shall be marked along the interior boundary of the buffer zone by durable and easily recognized markers.

Section 4. Blasting Signs. Blasting signs shall be posted in accordance with the requirements of the Kentucky Division of Mines and Minerals.

Section 5. Topsoil Markers. (1) If applicable, stockpiles and other areas where topsoil or other plant growth material are segregated, shall be marked.

(2) If soil horizons are removed and stored separately, each soil horizon stockpile shall have a separate and appropriately marked sign.

(3) Placement and quantity of markers shall be sufficient to clearly define the stockpiles.

(4) Markers shall remain in place until the material is removed.

LAUNCEY S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this proposed administrative regulation shall be held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training Room) of the Department for Natural Resources at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by May 20, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on June 1, 2004. Send written notification of your intent to be heard at the hearing, or your written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to physically disabled persons. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5958, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines, (502) 564-6940

(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes requirements for signs and markers at noncoal mineral operations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HR 96, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by two legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes can be changed by the effective control of surface disturbance with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party State agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:
1. The protection of the public and the protection of adjoining and other lands and property from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 7 to meet these obligations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for signs and markers to identify the permit and delineate the permit boundary, markers to delineate and protect buffer zones along streams, and markers to protect topsoil stockpiles.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of flourspar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoals, sand and gravel. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995 and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002 and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the Cabinet's Department for Natural Resources.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:042 Blasting

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to
promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbances in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for the use of explosives by noncoal mineral operations.

Section 1. General. (1) If blasting is planned for the proposed mineral operation, it shall be conducted in accordance with the laws and administrative regulations of the Kentucky Division of Mines and Minerals, 805 KAR Chapter 4.

(2) If flyrock falls outside the permit boundary, or if property damage occurs outside the permit boundary, as a result of flyrock, then appropriate mitigative measures shall be taken, as determined by the cabinet based upon the nature and scope of the environmental and property damage.

Section 2. Blasting Signs. Warning signs shall be posted if explosives are to be used, in accordance with 405 KAR 5:036E.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004, at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training Room) of the Department for Natural Resources at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by May 20, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on June 1, 2004. Send written notification of your intent to be heard at the hearing, or your written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays days prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6940, fax (502) 564-5698, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for the use of explosives by noncoal mineral operations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003, notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party state agrees to establish an effective program for the conservation and use of mined lands, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:
1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for the use of explosives by noncoal mineral operations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluorspar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004, there are 209 mineral operations or permit in 83 counties, utilizing 4 methods of mining.
The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995 and remains in effect until replaced by more stringent emergency administrative regulations on December 13, 2002, and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workload is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the general fund as budgeted to
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the cabinet's Department for Natural Resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.

TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:048. Protection of environmental resources.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for the protection of fish and wildlife values and other environmental features.

Section 1. Environmental Resources. (1) A mineral permittee shall, to the extent possible, minimize disturbances and adverse impacts to fish and wildlife and related environmental values.

(2) No mining operation shall be conducted which will result in the adverse effects to or modification of a wetland without the appropriate permits and approvals.

(3) No mining operation shall be conducted within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; national recreational areas; state nature preserves dedicated pursuant to KRS 146.410; or state wildlife management areas; the Wild and Scenic Rivers System, including study rivers designated under section 5(a), of the Wild and Scenic Rivers Act (16 U.S.C. Sec. 1276(a)), or rivers or study river corridors as established in any guidelines pursuant to that Act; rivers and their corridors designated under the state Wild Rivers Act pursuant to KRS Chapter 146; or similar public lands.

(4) No land within 100 feet of an intermittent or perennial stream shall be disturbed by mining operations, except if appropriate permits or approvals have been obtained.

(5) The cabinet shall prohibit a mineral operation on a natural hazard land if necessary to protect the health, safety, or welfare of people, property, or the environment.

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training Room) of the Department for Natural Resources at 2 Hudson Hol-

low, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by May 20, 2004, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend 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. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on June 1, 2004. Send written notification of your intent to be heard at the hearing, or your written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-6594, fax (502) 564-5698, e-mail: Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the protection of fish and wildlife values and other environmental features by noncoastal mining operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003, notwithstanding findings of deficiency by two legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party state agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.

4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for the protection of fish and wildlife values and other environmental features by noncoastal mining operations.

(2) If this is an amendment: to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative
regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel, mining of clay, mining of sand and gravel, mining of gravel, mining of rock and sand, mining of asphalt; and mining of limestone and dolomite. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only, 24 operations involve underground mining, including 8 that are combined surface and underground mines.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995, and removed in effect until replaced by more stringent emergency administrative regulations on December 13, 2002, and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.
(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:026. Handling of materials.
RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for backfilling and grading, handling of wastes, handling of acid or toxic-forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.

Section 1. Backfilling and Grading. (1) General statement concerning backfilling. All overburden that is not placed in approved excess spoil fills shall be placed back in existing pits and graded.
(2) Surface drainage.
(a) Natural drainways in the area affected by the mineral operation shall be kept free from overburden except if approved by the cabinet in accordance with 405 KAR 5:032.
(b) If, during the mineral operation, it is necessary to cross a natural drainway, proper drainage structures shall be provided.
(c) Sufficient water retaining structures, silt control structures, and diversion ditches, constructed as approved by the cabinet in accordance with 405 KAR 5:032, shall be placed to control all runoff from the mineral operation before the work begins. These structures shall be located as near as possible to the disturbed area, and out-of-perennial streams unless approved by the cabinet in accordance with 405 KAR 5:032.
(d) Any water accumulating on a bench or similar area where the drainage is off the mineral operation shall be prepped or siphoned into sediment control structures.

The moving of overburden to release accumulated water shall be prohibited unless a drainage can be constructed with the approval of the cabinet. The cabinet may make this approval if the cabinet finds that the release is necessary to prevent the development of instability, and the release will not cause additional environmental harm.
(3) If the mineral operation produces a highwall, at least one
suitable access shall be provided to lands above the highwall within each 4,000 feet of distance along the highwall. In addition, access shall be provided as necessary so no landowner is prevented access to his property.
(4) Spoil or overburden removed shall be placed, graded, and stabilized so that soil erosion, surface disturbance, and stream sedimentation will be minimized.
(5) All grading shall be kept current and shall be completed before equipment pertinent to the mineral operation is moved from the site unless approved, in writing, by the cabinet's inspector, after making a finding that removal of the equipment is not in conflict with the approved method of operation and will not impede compliance with contemporaneous reclamation requirements.
(6) If conditions develop in the mineral operation so that the approved reclamation plan and backfilling and grading plan cannot be carried out as planned, modifications of the plan shall be submitted by the mineral operator to the cabinet for approval in accordance with 405 KAR 5:032.

Section 2. Waste Materials. (1) The conduct of mining and the handling of refuse and other mining wastes shall be done in such a way as to reduce adverse effects in the area and to protect the public and adjoining landowners from damage to their lands, to streams, and to other property.
(2) Upon final abandonment, all buildings, structures, metal, lumber, and other refuse resulting from the mineral operation shall be removed or buried.
(3) Spoil, overburden, refuse, or any other mining waste shall not be placed on a previous or potential slide area. The placement of the material shall be subject to approval by the cabinet in accordance with 405 KAR 5:032.
(4) Unless specifically authorized by the cabinet by a permit from the Division of Waste Management, household wastes or other wastes, generated off site, shall not be placed within the pit.
area or within the permit boundary of a mineral operation.

Section 3. Acid forming or Toxic Forming Materials. (1) All acid or toxic forming material shall be buried with not less than four (4) feet of clean fill as cover.

(2) Measures shall be taken to prevent stream and soil pollution, such as placement of acid or toxic forming materials outside of natural drainways.

(3) The mineral permittee shall conduct testing of materials as directed by the cabinet in order to prevent stream and soil pollution.

Section 4. Topsoil Handling. (1) General requirements.

(a) If practicable, all topsoil or subsoil to be saved for redistribution, specified under subsection (2) of this section, shall be removed as a separate layer or layers from the area to be disturbed and shall be segregated from other materials.

(b) If practicable, after removal, these materials shall be redistributed or otherwise stockpiled.

(c) After redistribution, if the topsoil becomes eroded and hard, it shall be scarified prior to seeding.

(2) Soil removal. For areas where topsoil is to be removed and saved as a plant growth medium:

(a) Vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared. Herbaceous vegetation and other small plants which will add to the organic constituency of the topsoil, but do not interfere with topsoil salvaging, may be retained along with the topsoil.

(b) All the topsoil present in the area to be disturbed shall be removed and segregated for redistribution.

1. If less than six (6) inches of topsoil is present, then at least the upper six (6) inches of soil shall be removed and segregated for redistribution, except where less than six (6) inches of soil is present.

2. If less than six (6) inches of soil is present, whatever soil and subsoil is available, at the area to be disturbed, shall be removed and segregated for redistribution.

(3) Soil storage.

(a) Soil materials removed pursuant to subsection (2) of this section shall be stockpiled only if it is impractical to promptly redistributed the materials on adjacent disturbed areas.

(b) Stockpiled soil shall be selectively placed on stable areas, outside of water drainways and shall:

1. Be protected from wind and water erosion through the seeding of quick cover grasses or legumes and application of mulch.

2. Be seeded with perennial grasses and legumes if the soil is to be stockpiled for more than two (2) years; and

3. Be protected from unnecessary compaction.

(4) Soil amendments.

(a) Lime shall be applied to redistributed topsoil in an amount to obtain a buffer pH of six and four-tenths (6.4).

(b) Adequate fertilizer shall be applied to redistributed topsoil.

At a minimum, 100 pounds of nitrogen (N) and 100 pounds of phosphate (P2O5) shall be applied per acre.

(c) Areas where topsoil has been redistributed shall be seeded with quick cover and permanent grasses and legumes as soon as possible during first normal period of favorable planting.

(d) Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

Section 5. Disposal of Excess Spoil. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground water;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Location. If possible, placement in pits shall be the preferred location for disposal. Otherwise the disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of 405 KAR Chapter 5, and shall be placed, if possible, upon or above a natural terrace, bench, or berm if this placement provides additional stability and prevents mass movement.

(3) Placement in pits. On a case-by-case basis, the cabinet may waive all or part of the requirements of subsections (4) through (7) of this section if spoil is placed in pits where there is no potential for mass movement or substantial erosion.

(4) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(5) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer.

1. The cabinet shall approve parameters used in the stability analyses if the parameters are based upon adequate investigations of foundation and fill material, including field reconnaissance, subsurface investigations; and data obtained from laboratory analyses of the materials.

2. The cabinet may approve parameters based upon data obtained from sources other than laboratory analyses of the materials if that data would yield results which ensure compliance with the stability requirements of this administrative regulation.

3. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8h:1v (thirty-six (36) percent) or a lesser slope as may be designated by the cabinet based on local conditions, keyway cuts (excavations to stable bedrock), rock toe buttresses, or a combination of these shall be constructed to ensure stability of the fill.

(6) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored in accordance with Section 4 of this administrative regulation. If approved by the cabinet in accordance with 405 KAR 5:032, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts of a thickness approved by the cabinet to ensure stability based on site specific conditions; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material.

(c) The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the out-slope of the fill. The out-slope of the fill shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion, in accordance with 405
3. Terraces may be constructed on the outslope of the fill. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion, in accordance with 405 KAR 5/032E. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route runoff to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the fill.

7. Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements for hollowills if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainways, or wet weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. Surface runoff from above the fill shall not be diverted through or under the fill.

(b) Surface runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill. Diversions associated with excess spoil fills and appurtenant structures shall be designed and maintained to safely pass the peak runoff from a ten (10) year, twenty-four (24) hour precipitation event, except that diversions associated with hollowills and low from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid forming, and nontoxic forming rock; shall be free of coal, clay, and non-durable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices. For hollowills a subdrainage system for the fill shall be constructed in accordance with the following:

1. Be installed along the natural drainways;
2. Extend from the toe to the head of the fill; and
3. Contain lateral drains to each area of potential drainage or seepage.

(d) The cabinet may approve diversions located on fill material if necessary due to topography and configuration of the fill, if the cabinet determines that there will be no adverse impacts to the excess spoil fill, the public health and safety, and the environment.

8. Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

Section 6. Additional performance standards for mining operations on slopes of more than twenty (20) degrees.

(1) The mineral permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

(a) Spill;
(b) Waste materials, including waste mineral matter;
(c) Debris, including that from clearing and grubbing of haul road construction; and
(d) Abandoned or disabled equipment.

(2) Nothing in this section shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapter 5 and the material is moved and placed in a controlled manner.

(3) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Woody materials may be chipped and placed through a surface of the backfill as much, if special provision is made for their use and approved by the cabinet.

(4) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENT: March 12, 2004
FILED WITH LRC: March 15, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training Room) of the Department for Natural Resources at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by May 20, 2004, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend 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. A transcript of the hearing will be made unless a written request for a transcript is made. If you request a transcript, you will be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on June 1, 2004. Send written notification of your intent to be heard at the hearing, or your written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, phone (502) 564-5940, fax (502) 564-5698, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for the handling of materials by noncoal mineral operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party State agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water resources.

3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.

4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.

(c) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes specific requirements for backfilling and grading, handling of wastes, handling of acid or toxic forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.

2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite, mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel, mining of clay, mining of tar sand or rock asphalt; and mining of fluor spar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 24, 1996 and renewed in effect until replaced by more stringent emergency administrative regulations on December 13, 2002 and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.

(b) On a continuing basis: No significant cost is expected.

6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.

7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish or increase fees.

9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not appropriate because there are no classes of regulated activities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:078. Contemporaneous reclamation.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes performance standards for timing of reclamation.

Section 1. Contemporaneous Reclamation. (1) On lands where the strip method of mineral production produces a bench or where the surface mining is done on the contour, grading shall be kept current with the removal of the mineral, which shall mean within ninety (90) days following the mineral removal. Where special conditions warrant, these requirements may be modified by the cabinet.

(2) On lands where the method of mineral operation is of the quarry type that produces a deep pit, the final reclamation of the site shall follow completion of mining within 180 days.

(3) On lands where the method of mineral operation is of the underground type, the final reclamation of the site shall follow completion of mining within 180 days.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training Room) of the Department for Natural Resources at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by May 20, 2004, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend 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. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on June 1, 2004. Send written notification of your intent to be heard at the hearing, or your written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to
VOLUME 30, NUMBER 11 – MAY 1, 2004

persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five workdays prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky, 40601-4021, phone (502) 564-6940, fax (502) 564-5696, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines

1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for contemporaneous reclamation at noncoal mineral operations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 98, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by two legislative subcommittees and were rendered null and void by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party State agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:
1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky’s program at 405 KAR Chapter 5 to meet these obligations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes performance standards for timing of reclamation.

2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of rivers or creeks, sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of fluor spar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending.

The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

4) Provide an assessment of how the above group or groups will be impacted by either implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995 and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002 and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is 100% from the General Fund as budgeted to the cabinet’s Department for Natural Resources.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not directly or indirectly establish or increase fees.

9) TIERING: Is tiering applied? Tiering is not appropriate because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The entities subject to this administrative regulation contribute similarly to the environmental concerns addressed by this administrative regulation.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
(New Administrative Regulation)

405 KAR 5:082. Reclamation bond.

RELATES TO: KRS 350.0(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 authorizes the Environmental and Public Protection Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes requirements for when bond is required, bond amount, type of payment, bond forfeiture, and bond forms, for noncoal mineral operations.

Section 1. Applicability. A reclamation bond shall be required if the cabinet:
1) Finds the mineral operation to be temporary; or
2) Finds that the applicant previously has not had a mineral operation in the Commonwealth of Kentucky with a compliance
Section 2. Bond Amount. (1) If a reclamation bond is required pursuant to Section 1 of this administrative regulation, the mineral operator shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the penal sum of not less than $100 nor more than $500 for each acre or fraction of an acre, with a minimum bond of $2,000, for the permitted area.

(2) A mineral permittee may request reduction of the required reclamation bond amount at any time if the mineral permittee's method of mineral operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and if the mineral operation complies with all applicable statutes and administrative regulations and the permit plan.

Section 3. Type of Payment. (1) Reclamation bond shall be either a surety bond or a cash bond which may include:
(a) Certificates of deposit;
(b) Letters of credit;
(c) Acceptable escrow accounts; or
(d) A combination of these bonding methods.

(2) If a surety bond is filed, it shall be accompanied by a power of attorney affidavit allowing the surety to act on behalf of the mineral permittee with respect to reclamation.

Section 4. Bond Forfeiture. (1) The cabinet shall have the authority to forfeit a bond if the mineral operation is not conducted in accordance with the statutes, administrative regulations, and the permit plan as approved by the cabinet.

(a) The entire bond may be forfeited and deposited in an appropriate account for use in the payment of all costs associated with the reclamation and restoration of the permit area to which the forfeited bond applies.

(b) If forfeiture of the bond is required, the cabinet shall send written notification by certified mail, return receipt requested, to the mineral permittee and the surety holding the bond of the cabinet's decision. This notification shall:
1. Explain the reasons for the forfeiture;
2. Indicate the amount to be forfeited; and
3. Advise the mineral permittee and those responsible for the bond of their right to a hearing.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) "Letter of Credit, NCR-10," March, 1990.
(c) "Escrow Agreement, NCR-11," March, 1990.
(d) "Request for Bond Release, NCR-12," March, 1990.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 12, 2004
FILED WITH LRC: March 16, 2004 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 27, 2004, at 10 a.m. (EDT) in Room D-16 (Training Room) of the Department for Natural Resources at 2 Hudson Hollow, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by May 20, 2004, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend 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. A transcript of the hearing will not be made unless a written request for a transcript is made. If you request a transcript, you may be required to pay for it. If you do not wish to be heard at the hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 4:30 p.m. on June 1, 2004. Send written notification of your intent to be heard at the hearing, or your written comments on the proposed administrative regulation, to the contact person listed below. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five working days prior to the hearing.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, telephone (502) 564-6940, fax (502) 564-5696, e-mail Jim.Villines@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jim Villines
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for reclamation bonds for noncoal mineral operations.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement an effective program to control the effects of noncoal mineral mining operations, in accordance with KRS 350.029, 350.240, and the Interstate Mining Compact as codified at KRS 350.300. It is also necessary to comply with 2004 HJR 89, which requires the cabinet to promulgate administrative regulations identical to those effective on February 22, 1995, which were amended on September 12, 2003 notwithstanding findings of deficiency by 2 legislative subcommittees and were rendered null, void and unenforceable by 2004 HB 295.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes call for the effective control of surface disturbances in connection with mining as defined by the Interstate Mining Compact. In Article III of the Compact, each party state agrees to establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:
1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.
2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future. This administrative regulation is part of Kentucky's program at 405 KAR Chapter 5 to meet these obligations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for when bond is required, bond amount, type of payment, bond forfeiture, and bond forms, for noncoal mineral operations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(e) How the amendment will improve the existing regulation: This is a new administrative regulation.
(f) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulated entities are noncoal mining activities: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; and mining of
fluorspar and other vein minerals. These activities include both the strip mining, and the surface effects of underground mining, of noncoal minerals. As of March 2004 there are 209 mineral operations under permit in 83 counties, with 4 new applications pending. The permitted operations include 118 for limestone only, and include 90 that involve sand, gravel, clay, and shale, alone or in some combination. 185 operations are surface mines only. 24 operations involve underground mining, including 8 that are combined surface and underground mines.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation applies to all noncoal mineral operations. It reestablishes the same requirements that were adopted February 25, 1995 and remained in effect until replaced by more stringent emergency administrative regulations on December 13, 2002 and ordinary administrative regulations on September 12, 2003. Thus this administrative regulation does not subject the affected entities to requirements that are different or more stringent than previously applied to them.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No significant change in permitting or enforcement workloads is expected to result from this amendment, and therefore no significant cost is expected.
(b) On a continuing basis: No significant cost is expected.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding is 100% from the General Fund as budgeted to the cabinet's Department for Natural Resources.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not directly or indirectly establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is applied. This administrative regulation only requires a reclamation bond for temporary mineral operations and for applicants that previously have not had a mineral operation in the Commonwealth of Kentucky with a compliance record acceptable to the cabinet. These are classes of mineral operations that would pose the most risk of failure to reclaim.
The April meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, April 14, 2004, at 10:00 a.m. in Room 149 of the Capitol Annex. Representative Tanya Pullin, Co-Chair, called the meeting to order and the roll call was taken. The minutes of the March 9, 2004 meeting were approved.

Present were:
- Members: Representative Tanya Pullin, Co-Chair; Senator Damon Thayer, Co-Chair; Senators Joey Penderlost, and Gary Tapp; Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.
- LRC Staff: Dave Nicholas, Donna Little, Donna Kemper, Sarah Amburger, Laura Milam, Ellen Steinberg, Emily Caudill.
- Guests: Jim Grawe, Dr. Howard P. King, Kristen Webb, Board of Veterinary Examiners; Jerry W. Herndon, Board of Architects; Nathan Goldman, Board of Nursing; Darin Moore, Morgan M. Sprague, Jack Damon, Justice and Public Safety Cabinet; Kevin Noland, Education Cabinet; David Coyle, Sally Mooney, Ken Pennington, Dennis Langford, Frank Dempsey, Environmental And Public Protection Cabinet; Kathy Adams, Rosanne Barkley, Gary Bevill, Carla Combs, Karen Doyle, Shirley Eldridge, Victor M. Negron, Cabinet For Health and Family Services; Joe Debin, McBrray, McGinnis, Leslie and Kirkland Law Firm.

Administrative regulations reviewed by the Subcommittee:

Board of Veterinary Examiners
201 KAR 16:015. Fees. Kristen Webb, Director, Division of Licensing and Occupations, Patrick King, Member, Veterinary Examining Board, and Jim Grawe, Assistant Attorney General, represented the Board. In response to a question by Co-Chair Pullin, Ms. Webb stated that this administrative regulation did not increase any fees.

A motion was made and seconded to approve the following amendment: to amend Section 3 to delete provisions that repeated or summarized statutory provisions. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 16:050. Continuing education. A motion was made and seconded to approve the following amendments: to amend Sections 2 to 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Examiners and Registration of Architects
201 KAR 19:315. Qualifications for certification. Jerry Herndon, Executive Director, and Jim Grawe, Assistant Attorney General, represented the Board.

Board of Nursing
201 KAR 20:215. Continuing competency requirements. Nathan Goldman, General Counsel, represented the Board. A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Justice and Public Safety Cabinet: Breath Analysis Operators
500 KAR 8:020. Breath alcohol analysis instruments. Morgan Sprague, Legal Representative, and Darin Moore, Strategic Planning Branch, represented the Cabinet. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Sections 1 and 2 to update departmental references. Without objection, and with agreement of the agency, the amendments were approved.

500 KAR 8:030. Administration of chemical analysis tests. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Corrections: Office of the Secretary
501 KAR 6:020. Corrections policies and procedures. Jack Damon, Deputy General Counsel, represented the Department. A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to correct citations and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:989. Corrections secured policies and procedures. Pursuant to KRS 61.810(1)(i) and (k), KRS 61.815(2), and KRS 197.025(6), the Subcommittee went into closed session to review this administrative regulation.

Department of State Police: Candidate Selection
502 KAR 45:055. Oral interview. Morgan M. Sprague, Legal Representative, and Darin Moore, Strategic Planning Branch, represented the Cabinet. A motion was made and seconded to approve the following amendments: to amend Section 3 to state that for each category in the oral interview, the scoring range shall be from one to five, rather than zero to five. Without objection, and with agreement of the agency, the amendments were approved.

Education Cabinet: Kentucky Board of Education: Office of Instruction
704 KAR 3:402. Repeal of 704 KAR 3:401, Principal assessment centers. Kevin Noland, General Counsel, represented the Board.

Environmental and Public Protection Cabinet: Department of Financial Institutions: Mortgage Loan Companies and Mortgage Loan Brokers
808 KAR 12:065. Disclosure for lender/broker making less than five (5) loans per year. Sally Mooney, Staff Attorney, Ken Pennington, Deputy Commissioner, and David Coyle, Director, represented the Department. In response to questions by Representative Bruce, Mr. Pennington stated that the Department had worked with the mortgage broker industry on this administrative regulation and that industry was in agreement with its provisions.

Department of Housing, Buildings and Construction: Electrical Inspectors
815 KAR 35:050 & E. Licensing of electrical contractors, electricians, and master electricians. Dennis Langford, Executive Director, and Frank Dempsey, General Counsel, represented the Department. A motion was made and seconded to approve the following amendments: (1) to amend the REFERENCES TO AND STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 1 to 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Cabinet for Health and Family Services: Department for Public Health: Communicable Diseases
902 KAR 2:055. Immunization data reporting and exchange. Jim Career, Legislative Liaison, Victor Negron, Program Manager, and Gary Bevill, Regulation Draftsman, represented the Department. A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 3 to incorporate by reference the required immunization survey; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

Environmental and Public Protection Cabinet: Department for Environmental Protection: Water Quality
- 401 KAR 5:002. Definitions for 401 KAR Chapter 5.
- 401 KAR 5:026. Designation of uses of surface waters.
- 401 KAR 5:031. Surface water standards.

Department for Surface Mining Reclamation and Enforcement:
General Provisions
- 405 KAR 7:001. Definitions for 405 KAR Chapter 7.
Permits
- 405 KAR 8:001. Definitions for 405 KAR Chapter 8.
Bond and Insurance Requirements
Inspection and Enforcement
- 405 KAR 12:001. Definitions for 405 KAR Chapter 12.
Performance Standards for Surface Mining Activities
- 405 KAR 16:001. Definitions for 405 KAR Chapter 16.
Performance Standards for Underground Mining Activities
Special Performance Standards
Areas Unsuitable for Mining

Cabinet for Health and Family Services: Department for Community Based Services: Protection and Permanency: Child Welfare
- 922 KAR 1:050. Approval of adoption assistance.
- 922 KAR 1:320. Services appeals.
- 922 KAR 1:480. Appeal of child abuse and neglect investigative findings.

The Subcommittee adjourned at 10:21 a.m. until May 11, 2004 at 10:30 a.m.
The following administrative regulations were available for consideration by the Education Assessment and Accountability Review Subcommittee during their meetings of March 18, 2004, having been referred to the Committee on February 12, 2004, pursuant to KRS 13A.290(6):

703 KAR 5:001
703 KAR 5:020
703 KAR 5:070
703 KAR 5:120
703 KAR 5:130
703 KAR 5:160

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

703 KAR 5:001
703 KAR 5:020
703 KAR 5:070
703 KAR 5:120
703 KAR 5:130
703 KAR 5:160

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 18, 2004 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 30 of the Administrative Register from July, 2003 through June, 2004. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 29 are those administrative regulations that were originally published in VOLUME 29 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2003 bound Volumes were published.

KRS Index

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 30 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 30 of the Administrative Register, and is mainly broken down by agency.
## VOLUME 29

The administrative regulations listed under VOLUME 29 are those administrative regulations that were originally published in Volume 29 (last year’s) issues of the Administrative Register but had not yet gone into effect when the 2003 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

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**EMERGENCY ADMINISTRATIVE REGULATIONS:**

(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

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