ARRS - MAY 2005 TENTATIVE AGENDA ........................................ 1765
REGULATION REVIEW PROCEDURE ........................................ 1787

EMERGENCIES:
Justice and Public Safety Cabinet ........................................ 1768
EPPC, Division of Heating, Ventilation, and Air Conditioning ... 1769
EPPC, Office of State Fire Marshall .................................... 1774

AS AMENDED:
Boards and Commissions ................................................. 1782
Board of Architects .................................................... 1785
Department of Fish and Wildlife Resources ......................... 1786
Justice and Public Safety Cabinet .................................... 1788
Education Cabinet ..................................................... 1812
EPPC, Department of Labor .......................................... 1816

AMENDED AFTER COMMENTS:
EPPC, Division of Air Quality ......................................... 1820
Justice and Public Safety Cabinet .................................... 1822
EPPC, Division of Oil and Gas Conservation ....................... 1825

PROPOSED AMENDMENTS RECEIVED THROUGH NOON,
April 15, 2006:
Kentucky Higher Education Assistance Authority ............... 1830
Council on Postsecondary Education .............................. 1843
Education Professional Standards Board ......................... 1847
Teachers Retirement Systems ...................................... 1873
Finance and Administration Cabinet ................................ 1876
Board of Licensure for Professional Engineers and Land Surveyors 1882
Justice and Public Safety Cabinet ................................ 1883
Transportation Cabinet .............................................. 1891
Education Cabinet .................................................... 1893
Council on Postsecondary Education .............................. 1897
Education Cabinet .................................................... 1898
EPPC, Division of Building Code Enforcement .................. 1899
EPPC, Division of Heating, Ventilation, and Air Conditioning ... 1902
EPPC, Office of State Fire Marshal ................................ 1907
Cabinet for Health and Family Services ......................... 1909

NEW ADMINISTRATIVE REGULATIONS RECEIVED
THROUGH NOON, APRIL 15, 2006:
Office of Attorney General ........................................ 1916
Finance and Administration Cabinet .......................... 1917
Board of Licensure for Professional Engineers and Land Surveyors .. 1920

April 12, 2005 MINUTES OF THE ARRS ......................... 1923
OTHER COMMITTEE REPORTS ................................NONE

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ................................... K-2
KRS Index .......................................................... K-14
Subject Index ........................................................ K-25

MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-
atively scheduled to meet May 10 2005 at 10:00 a.m. in Room
149 of the Capitol Annex, Frankfort, Kentucky. See tentative
agenda on pages 1765-1769 of this Administrative Register.
VOLUME 31, NUMBER 11 – May 1, 2005
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 10, 2005, at 10:00 a.m., Room 149 Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services

KHEAA Grant Program
11 KAR 5:130. Student application.
11 KAR 5:140. KTG award determination procedure.
11 KAR 5:145. CAP grant award determination procedure.

Robert C. Byrd Honors Scholarship Program

GENERAL GOVERNMENT CABINET
Boards and Commissions

Board of Medical Licensure
201 KAR 9:018. Physician advertising. (Hearing/Written Comments)

Board of Architects
201 KAR 19:085. Fees. (Written Comments Received)

COMMERCE CABINET
Department of Fish and Wildlife Resources

Game
301 KAR 2:049. Small game and furbearer hunting on public areas.
301 KAR 2:062. Transportation and holding of exotic wildlife. (Hearing/Written Comments)
301 KAR 2:111. Deer and turkey hunting on special areas.
301 KAR 2:142. Spring wild turkey hunting.
301 KAR 2:144. Fall wild turkey hunting.
301 KAR 2:172. Deer hunting seasons and requirements.
301 KAR 2:179. State park deer hunts.
301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

Hunting and Fishing
301 KAR 3:022. License, tag and permit fees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water

Water Resources
401 KAR 4:010. Water withdrawal permits, criteria, reports.

Underground Storage Tanks

Air Quality-General Administrative Procedures
401 KAR 50:017. Repeal of 401 KAR 50:016.
401 KAR 50:045. Performance tests.

General Standards of Performance
401 KAR 63:005. Open burning. (Amended After Comments)

Department for Natural Resources

General Provisions
405 KAR 7:001. Definitions for 405 KAR Chapter 7. (Not Amended After Comments) (Deferred from December 2003)

Permits
405 KAR 8:001. Definitions for 405 KAR Chapter 8. (Not Amended After Comments) (Deferred from December 2003)

Bond and Insurance Requirements
405 KAR 10:001. Definitions for 405 KAR Chapter 10. (Not Amended After Comments) (Deferred from December 2003)

Inspection and Enforcement
405 KAR 12:001. Definitions for 405 KAR Chapter 12. (Not Amended After Comments) (Deferred from December 2003)

Performance Standards for Surface Mining Activities
405 KAR 16:001. Definitions for 405 KAR Chapter 16. (Not Amended After Comments) (Deferred from December 2003)

Performance Standards for Underground Mining Activities
405 KAR 18:001. Definitions for 405 KAR Chapter 18. (Not Amended After Comments) (Deferred from December 2003)

Special Performance Standards
405 KAR 20:001. Definitions for 405 KAR Chapter 20. (Not Amended After Comments) (Deferred from December 2003)

Areas Unsuitable for Mining
405 KAR 24:001. Definitions for 405 KAR Chapter 24. (Not Amended After Comments) (Deferred from December 2003)

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities

Jail Standards for Full-Service Facilities
501 KAR 3:030. Fiscal management. (Written Comments Received)

Jail Standards for Restricted Custody Center Facilities
501 KAR 7:020. Administration; management.
501 KAR 7:030. Fiscal management. (Written Comments Received)
501 KAR 7:090. Medical services.

Department of Criminal Justice Training

Kentucky Law Enforcement Council
503 KAR 1:110 & E. Department of Criminal Justice Training basic training: graduation requirement; records. ("E" expires 9/18/2005)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training

Occupational Safety and Health
803 KAR 2:500 & E. Maritime employment. ("E" expires 9/18/2005)

Department for Natural Resources
Division of Oil and Gas Conservation

Coal Bed Methane
805 KAR 9:010. Protection of fresh water zones. (Written Comments Received)
805 KAR 9:020. Well location plat, preparation, form and contents. (Written Comments Received)
805 KAR 9:030. Surety bonds; requirements, cancellation. (Deferred from March)
805 KAR 9:040. Plugging wells. (Written Comments Received)
805 KAR 9:050. Gas storage reservoirs; drilling, plugging in vicinity. (Deferred from March)
805 KAR 9:060. Operating or deepening existing coal bed methane wells and drilling deeper than the permitted depth. (Written Comments Received)
805 KAR 9:070. Directional and horizontal wells. (Deferred from March)
805 KAR 9:080. Content of the operation and reclamation proposal; form on which the proposal is filed. (Written Comments Received)
805 KAR 9:090. Production reporting. (Deferred from March)
805 KAR 9:100. Public liability insurance and self-insurers. (Written Comments Received)

Department of Public Protection
Horse Racing Authority

Thoroughbred Racing
810 KAR 1:009 & E. Jockeys and apprentices. ("E" expires 9/18/2005)

Office of Housing, Building and Construction
Division of Building Code Enforcement

Kentucky Building Code
815 KAR 7:070. The Kentucky Certified Building Inspector Program.

Heating, Ventilation, and Air Conditioning Licensing Requirements
815 KAR 8:030. Apprentice heating, ventilation, and air conditioning (HVAC) mechanic registration and certification requirements.

Boilers and Pressure Vessels
815 KAR 15:080. Fees for licensing new boiler and pressure vessel contractors.

Office of State Fire Marshall

Manufactured Homes and Recreational Vehicles
815 KAR 25:080. Requirements for certifying manufactured home installers.

Electrical Inspectors
815 KAR 35:090. Electrical Training Program standards.
815 KAR 35:100. Electrical continuing education procedure.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner

Medicaid Services
907 KAR 1:019 & E. Outpatient pharmacy program. ("E" expires 9/18/2005) (Written Comments Received)

Department for Community Based Services
Division of Policy Development

K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). (Written Comments Received)
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.
VOLUME 31, NUMBER 11 – May 1, 2005
EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, APRIL 15, 2005

( NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
501 KAR 10:001E

Nature of the Emergency: The Department of Corrections is obligated by statute to file administrative regulations for the Jail Standards Commission pursuant to KRS 441.055. The commission has recommended changes to the jail standard administrative regulations in 501 KAR Chapter 3. The Legislative Research Commission has determined that several of the recommended changes conflict with administrative regulations in 501 KAR Chapter 10. The Jail Standards Commission no longer wants to use the administrative regulations in 501 KAR Chapter 10 and requests that it be repealed. The amendments to 501 KAR Chapter 3 contain different space requirements that affect the building of jails that are currently in process and the emergency repealer is necessary to allow the 501 KAR Chapter 3 administrative regulations to go into effect so jail building projects are not disrupted and overcrowding situations exacerbated. The reasons an ordinary administrative regulation is not sufficient: Jail building projects may be disrupted if the 501 KAR Chapter 3 amendments are delayed to allow for the repeal of 501 KAR Chapter 10 by an ordinary administrative regulation. An ordinary administrative regulation will not be filed with the Regulations Compiler because this is a repealer regulation.

ERNIE FLETCHER, Governor
JOHN D. REES, Chairman, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Emergency Repealer)


RELATES TO: KRS 67A.028, 67B.020(1), 441.045, 441.055, Ky. Const. Sec. 99, 152
STATUTORY AUTHORITY: KRS 441.055
EFFECTIVE: April 11, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. The Jail Standard Commission wishes to repeal 501 KAR Chapter 10 and replace some of the administrative regulations by new provisions in 501 KAR Chapter 3 regulating direct supervision centers in full-service jails.

Section 1. The following administrative regulations are hereby repealed:
(1) 501 KAR 10:010, Definitions for 501 KAR Chapter 10;
(2) 501 KAR 10:020, Administration; management;
(3) 501 KAR 10:030, Fiscal management;
(4) 501 KAR 10:040, Personnel;
(5) 501 KAR 10:050, Physical plant;
(6) 501 KAR 10:060, Security; control;
(7) 501 KAR 10:070, Safety; emergency procedures;
(8) 501 KAR 10:080, Sanitation; hygiene;
(9) 501 KAR 10:090, Medical services;
(10) 501 KAR 10:100, Food services;
(11) 501 KAR 10:110, Classification;
(12) 501 KAR 10:120, Admission; searches and release;
(13) 501 KAR 10:130, Prisoner programs; services; and
(14) 501 KAR 10:140, Prisoner rights.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: April 7, 2005
FILED WITH LRC: April 11, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 5 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 May 31, 2005. 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: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation repeals the administrative regulations in 501 KAR Chapter 10 concerning direct supervision.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It repeals regulations that are no longer needed.
(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 content 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 affects 1 jail with direct supervision areas and the prisoners that are in the custody of the jails.
(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 repeal prevents a conflict with physical jail requirements between this chapter and 501 KAR Chapter 3.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
VOLUME 31, NUMBER 11 – May 1, 2005

(6) What is the source of 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 now, or by the change, if it is an amendment: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? No, 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.

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 act will affect. County jails that house state prisoners.

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 administrator. The regulation relates to county jails that house state prisoners by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.

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 (+/-): None
Expenditures (+/-): None
Other Explanation: None

STATEMENT OF EMERGENCY

815 KAR 8:010E

This emergency administrative regulation amends the process for the licensing of Master HVAC Contractors by changing the approved testing provider. An ordinary administrative regulation is not sufficient because the agency needs to immediately replace its testing provider to prevent a disruption of availability of testing for Master HVAC Contractor's license applicants. Disruption in testing is likely to result in economic hardship to the applicants and could result in disruption or delays to new or ongoing construction projects which would cause serious economic damage to Kentucky businesses or individuals. This emergency administrative regulation will be replaced by an ordinary administrative regulation and the ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAJUANA WILCHER, Secretary
FLOYD VAN COOK, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Emergency Amendment)

815 KAR 8:010E. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

RELATES TO: KRS 198B.650-198B.689
STATUTORY AUTHORITY: KRS 198B.654
EFFECTIVE: March 31, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) contracting business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors. This amendment is necessary in order to increase the application fee and note the change in the testing company administering the contractor examination.

Section 1. Definitions. (1) "Master HVAC contractor" or "master" is defined by KRS 198B.655(12).
(2) "Journeyman HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10).
(3) "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent judgment regarding activities of others acting under his direction.

Section 2. General Requirements. (1) Mandatory licensure. Any person, other than one exempted by KRS 198B.674, who is engaged in the business of HVAC contracting shall comply with applicable administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Each licensee shall complete eight (8) hours of continuing education, approved by the board, prior to renewal of the license for the next year.

(3) Supervision. (a) The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee.
(b) The master shall assign each apprentice to the oversight of one (1) or more journeymen.
(c) The master shall not personally engage in actual installation, maintenance, alteration or remodeling or repair unless the master also possesses a journeyman license.

(4) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 7(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application.
(a) An applicant seeking a master HVAC contractor license shall submit to the board:
1. A completed Master HVAC Contractor License Application on Form HVAC 1;
2. A nonrefundable initial license application fee of $250;
3. Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation;
4. Proof of the applicant's experience as required by KRS 198B.655(1)(b) and this administrative regulation; and
5. A passport-sized color photograph of the applicant; and
6. [6] Proof of insurance as required by KRS 198B.668,-[and]
(b) If the applicant is an employee representing a company, state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.
(1) The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or
alteration of all types of HVAC systems.

(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request. An oral examination shall be given upon good cause shown.

(3) An applicant shall successfully complete:
   (a) The examination known as the "Kentucky Master HVAC Contractor Examination" which is developed, administered and scored by the International Code Council Testing Company—Experior, 2400 N.E. 53rd Avenue, Gainesville, Florida 32653, telephone (800)-280-3926 with a passing grade of seventy (70) percent; or
   (b) An applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company [Experior, 2400 N.E. 53rd Avenue, Gainesville, Florida 32653, telephone (800)-280-3926] or other testing agency approved by the board.

(5) The examination fee shall be set by the testing company and paid directly to the testing company [fifty ($50) dollars and shall accompany the application for examination to Experior].

(6) The examination shall be provided and administered by the approved company or agency [Experior] as often as necessary but at least four (4) times a year at various locations.

(7) A passing score on the examination shall be valid for a period of two (2) years.

(8) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examinations administered by the International Code Council. The person or group submitting the examination must demonstrate that the examinations cover the same material and require the same level of knowledge as the International Code Council examinations.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section.

(1) Minimum experience. An applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:
   (a) Credit for experience in the HVAC business obtained after July 1, 1995, shall be for HVAC work under the supervision of a master.
   (b) Credit for experience obtained prior to July 1, 1995 shall be for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.

(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 6. Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, in accordance with subsection (5) of this section, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month. Licenses shall be renewed [June 30th of] each year.

(2) A renewal fee of $250 shall be paid prior to renewal. The office [department] shall send renewal application cards to each licensee each year to be returned with the required fee.

(3) Renewal application cards filed late, but no more than ninety (90) days after the last day of the licensee's birth month [later than September 29th] shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the renewal fee.

(4) Failure to renew ninety-one (91) days after the last day of the licensee's birth month [by September 29th] shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(5) Licenses which have been placed in inactive status are exempt from annual renewal. They shall be reactivated upon payment of a renewal fee for the year reactivated, the reactivation fee and compliance with continuing education requirements for each year of inactive status.

(6) If an initial license will be for a period of less than twelve (12) months, the initial license fee may be reduced on a pro rata basis.

(7) (6) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if the applicant fails to:
   (a) Pay the fees required for renewal, reactivation and restoration, if applicable;
   (b) Comply with the continuing education requirements established in Section 2(2) of this administrative regulation; or
   (c) Provide the current insurance certificate required by KRS 198B.668 and this administrative regulation.

(8) Licensees who have not previously provided a passport-size color photograph shall provide one (1) with their first renewal application filed immediately following the effective date of this administrative regulation.

Section 7. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:

(1) Restoration fee. The fee for renewal of expired licenses shall be fifty ($50) dollars.

(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty ($20) dollars. Inactive status shall be maintained until the licensee requests reactivation in accordance with Section 6(5) of this administrative regulation.

(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty ($20) dollars and compliance with Section 6(5) of this administrative regulation.

(4) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten ($10) dollar fee.

(5) Change of information fee. The fee for the change of information required by Section 2(4) of this administrative regulation shall be fifteen ($15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 8. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

LUANNA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 31, 2005 at 2 p.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, 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 updates the application and renewal process for Master HVAC Contractor licenses. It also changes the approved testing provider for these licenses.

(2) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient operation of the HVAC licensing program and will help protect the safety of licensees and the public by reducing the possibility of identity theft.

(3) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Ken-
STATEMENT OF EMERGENCY
815 KAR 8:020E

This emergency administrative regulation amends the process for the licensing of Journeyman HVAC Mechanics by changing the approved testing provider. An ordinary administrative regulation is not sufficient because the agency needs to immediately replace its testing provider to prevent a disruption of availability of testing for Journeyman HVAC Mechanics license applicants. Disruption in testing is likely to result in economic hardship to the applicants and could result in disruption or delays to new or ongoing construction projects which would cause serious economic damage to Kentucky businesses or individuals. This emergency administrative regulation will be replaced by an ordinary administrative regulation and the ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAUJANA WILCHER, Secretary
FLOYD VAN COOK, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Emergency Amendment)

815 KAR 8:020E. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

RELATES TO: KRS 198B.650-198B.689
STATUTORY AUTHORITY: KRS 198B.654
EFFECTIVE: March 31, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics. This amendment is necessary in order to increase the annual license renewal fee and note the change in the testing company administering the examination.

Section 1. Definitions. (1) "HVAC" is defined by KRS 198B.650(1), (2), (8), (9) and (15).
(2) "Master HVAC contractor" or "master" is defined by KRS 198B.650(12).
(3) "Journeyman HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10).

Section 2. General Requirements. (1) Mandatory licensure. A person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.
(2) Continuing education. Each journeyman licensee shall complete eight (8) hours of continuing education, approved by the board, prior to renewal of the license for the next year.
(3) The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. An applicant seeking a journeyman HVAC mechanic license shall submit to the board:
(a) A completed journeyman HVAC Mechanic Application on Form HVAC 2, September, 1995.
(b) A nonrefundable initial license application fee of fifty (50) dollars;
(c) Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and
(d) Proof of the applicant's experience as required by KRS 198B.650(2)(b) and Section 5 of this administrative regulation.

- 1771 -
(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.

(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request. An oral examination shall be given upon good cause shown.

(3) An applicant shall successfully complete:

(a) The examination known as the "Kentucky Journeyman HVAC Mechanic Examination" which is developed, administered, and scored by the International Code Council [testing company Experior, 2400 N.E. 53rd Avenue, Gainesville, Florida 32653, telephone (800) 260-3526] with a passing score of seventy (70) percent; or

(b) The applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the International Code Council [Experior] or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination to Experior.

(6) The examination shall be provided and administered by Experior as often as necessary but at least four (4) times a year at various locations.

(7) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another Kentucky HVAC contractor.

(c) Credit for completion of one (1) year of teaching experience in a board or state approved HVAC technical education program shall be considered equivalent to one (1) year employment.

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

Section 6. Renewal Requirements and Procedures. (1) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The office [department] shall send renewal cards to each licensee to be returned no later than the last day of the licensees birth month. Licenses shall be renewed each year [June 30].

(2) A journeyman HVAC license renewal filed late, but no more than ninety (90) days after the last day of the licensees birth month [later than September 29], shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation shall be added to the renewal fee.

(3) Failure to renew ninety-nine (91) days after the last day of the licensees birth month [by September 29] shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(4) Requests for renewal of a licensed journeyman HVAC mechanic shall be denied if any of the following occur:

(a) An applicant fails to pay the fees required for renewal and restoration, if applicable; or

(b) An applicant fails to comply with the continuing education requirements.

(c) Licensees who have not previously provided a passport-sized color photograph shall provide one (1) with their application for renewal immediately following the effective date of this administrative regulation.

Section 7. Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 6(2) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 8. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

LAIJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 31, 2005 at 2 p.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, 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 updates the application and renewal process for Journeyman HVAC licenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient operation of the HVAC licensing program and will help protect the safety of licensees and the public by reducing the possibility of identity theft.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Kentucky Board of HVAC Contractors to promulgate administrative regulations to administer the HVAC licensing program. This amendment provides procedural and administrative changes regarding how and when licensees will renew their licenses and changes the approved testing provider.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The birth month licensing provisions will reduce administrative costs for license renewals while providing greater convenience for licensees. Requiring photographs of licensees will help protect the public from fraud and the licensees from identity theft. Changes to the testing provider will provide greater availability and more flexibility for license applicants. Updated application forms will better reflect the requirements for licensure.

(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 updates the application
and renewal process for Journeyman HVAC licenses.

(b) The necessity of the amendment to this administrative regulation: The update is necessary to make the HVAC licensing procedure more efficient and safer for licensees and the public.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654 (1) requires the Kentucky Board of HVAC Contractors to promulgate administrative regulations to administer the HVAC licensing program. This amendment provides procedural and administrative changes regarding how and when licensees will renew their licenses and changes the approved testing provider.

(d) How the amendment will assist in the effective administration of the statutes: The six-month licensing provisions will reduce administrative costs for license renewals while providing greater convenience for licensees. Requiring photographs of licensees will help protect the public from fraud and the licensees from identity theft. Changes to the testing provider will provide greater availability and more flexibility for license applicants. Updated application forms will better reflect the requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 9,300 Journeyman HVAC licensees statewide, new applicants for Journeyman HVAC licenses, Division of HVAC.

(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: Licensees will be required to provide a color photograph. Most licensees will have their license renewal month changed to their birth month.

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

(a) Initially: Net administrative costs should be reduced by these amendments. In the first year after implementation of the amendment, some costs may be delayed until later in the fiscal year or until the next fiscal year.

(b) On a continuing basis: Administrative costs should be reduced as a result of these changes.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Division of HVAC is funded by license fees.

(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 new fees or funding will be required.

(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 not used. All licensees are required to renew in their birth month and provide a color photograph.

STATEDMENT OF EMERGENCY 815 KAR 8:045E

This emergency administrative regulation amends the process for the licensing of limited journeyman HVAC mechanics by changing the approved testing provider. An ordinary administrative regulation is not sufficient because the agency needs to immediately replace its testing provider to prevent a disruption of availability of testing for limited journeyman HVAC mechanics license applicants. Disruption in testing is likely to result in economic hardship to the applicants and could result in disruption or delays to new or ongoing construction projects which would cause serious economic damage to Kentucky businesses or individuals. This emergency administrative regulation will be replaced by an ordinary administrative regulation and the ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation.

ERNIE FLETCHER, Governor
LAJUANA WILCHER, Secretary
FLOYD VAN COOK, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Emergency Amendment)

815 KAR 8:045E. "Limited" licenses for journeyman HVAC mechanics.

RELATES TO: KRS 198B.658, 198B.666
STATUTORY AUTHORITY: KRS 198B.658
EFFECTIVE: March 31, 2005
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC contractor's law. This administrative regulation is a supplement to 815 KAR 8:020, and establishes a mechanism for the board to review and approve relevant experience and establish relevant examinations when an applicant seeks to become licensed to perform limited functions pursuant to the journeyman HVAC licensing law. This administrative regulation is necessary to treat qualified persons similarly by allowing applicants to be licensed according to their qualifications, and in order to meet the intention of KRS Chapter 13A as it relates to tiering of administrative regulations.

Section 1. Application for Limited Licenses. Applicants seeking to be licensed as a journeyman mechanic under 815 KAR 8:020, but who choose (chooses) to use their experience and career goals to function in a limited capacity, shall comply with the application requirements of 815 KAR 8:020, except that they may request, in writing, and shall be granted a limited license upon proof of experience and examination, as follows:

(1) "Limited" journeyman HVAC duct mechanic - An applicant seeking a "limited" journeyman HVAC duct mechanic license shall submit to the board:

(a) A completed limited journeyman HVAC duct mechanic license on Form HVAC 4, February 2005;
(b) A nonrefundable initial license application fee of fifty (50) dollars;
(c) Proof of satisfactory completion of the "Kentucky Limited Journeyman HVAC Duct Mechanic Examination" developed and administered by the International Code Council;
(d) A passport-sized color photograph of the applicant; and
(e) Proof of the applicant’s experience as required by KRS 198B.658(2)(b) and by 815 KAR 8:020, Section 5. The applicant shall apply for, provide proof of relevant experience of duct work and successfully pass the examination given by Block and Associates known as "Journeyman HVAC Duct Mechanic—KYOFP."

(2) "Limited" journeyman HVAC installer mechanic – An applicant seeking a "limited" journeyman HVAC installer mechanic license shall submit to the board:

(a) A completed Limited journeyman HVAC installer mechanic license on Form HVAC 5, February 2005;
(b) A nonrefundable initial license application fee of fifty (50) dollars;
(c) Proof of satisfactory completion of the "Kentucky Limited Journeyman HVAC Installer Examination" developed and administered by the International Code Council;
(d) A passport-sized color photograph of the applicant; and
(e) Proof of the applicant’s experience as required by KRS 198B.658(2)(b) and by 815 KAR 8:020, Section 5.

(3) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

(4) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examinations administered by the International Code Council. The person or group submitting the examination must demonstrate that the examinations cover the same material and require the same level of knowledge as the International Code Council examinations. The applicant shall apply for, provide proof of relevant experience of altering and successfully pass the examination given by Block
Section 2. Limited Licenses and Responsibilities. (1) A person licensed under the alternative limited licensing provisions of this administrative regulation may [e] work independently within the range of the limited license authorization while under the general supervision of a master HVAC contractor.

(2) A person holding a limited license shall not hold himself out as complying with all the journeyman HVAC mechanic experience and examination requirements of 815 KAR 8:020, and a limited license under this administrative regulation shall not replace the requirement that each master HVAC contractor shall have in his employ at least one (1) journeyman HVAC mechanic whose license is not limited.

(3) A person holding a "limited" license, pursuant to Section 1(1) or (2) of this administrative regulation, shall serve under the general supervision of the master HVAC contractor.

Section 3. Renewal Requirements and Procedures. Licenses issued pursuant to this administrative regulation shall be renewed as described in 815 KAR 8:020, Section 6.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form HVAC 4, Journeyman HVAC Limited Installer License Application." February 15, 2005.

(b) "Form HVAC 5, Journeyman HVAC Limited Duct Mechanic License Application." February 15, 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Housing, Buildings and Construction, Division of Heating, Ventilation and Air Conditioning, 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
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 31, 2005 at 2 p.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, 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 incorporates the applications and amends the renewal process for limited journeyman HVAC licenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient operation of the HVAC Licensing Program and will help protect the safety of licensees and the public by reducing the possibility of identity theft.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Kentucky Board of HVAC Contractors to promulgate administrative regulations to administer the HVAC licensing program. This amendment provides procedural and administrative changes and incorporates the forms used to apply for licenses, requires a color photograph of the applicant and changes the approved testing provider.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Requiring color photographs of licensees will help protect the public from fraud and the licensees from identity theft. Changes to the testing provider will provide greater availability and more flexibility for license applicants.

(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 updates the application and renewal process for limited journeyman HVAC licenses.

(b) The necessity of the amendment to this administrative regulation: The update is necessary to make the HVAC licensing procedure more efficient and safer for licensees and the public.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Kentucky Board of HVAC Contractors to promulgate administrative regulations to administer the HVAC Licensing Program. This amendment provides procedural and administrative changes regarding how and when licensees will apply for and renew their licenses and changes the approved testing provider.

(d) How the amendment will assist in the effective administration of the statutes: Requiring color photographs of licensees will help protect the public from fraud and the licensees from identity theft. Changes to the testing provider will provide greater availability and more flexibility for license applicants. Updated application forms will better reflect the requirements for licensure.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2,000 limited journeyman HVAC licensees statewide, new applicants for Journeyman HVAC licenses, Division of HVAC.

(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: Licensees will be required to provide a color photograph. Two new application forms are adopted and incorporated.

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

(a) Initially: Negligible. New forms will replace old forms as they run out.

(b) On a continuing basis: Negligible

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Division of HVAC is funded by license fees.

(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 new fees or funding will be required.

(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 not used. All applicants for each class of license are subject to the same requirements.

STATEMENT OF EMERGENCY
815 KAR 35:060E

This emergency administrative regulation amends the process for the licensing of electrical contractors, electricians and master electricians by changing the approved testing provider. An ordinary administrative regulation is not sufficient because the agency needs to immediately replace its testing provider to prevent a disruption of availability of testing for electrical license applicants. Disruption in testing is likely to result in economic hardship to the applicants and could result in disruption or delayd to new or ongoing construction projects which could cause serious economic damage to Kentucky businesses or individuals. This emergency administrative regulation will be replaced by an ordinary administrative regulation and the ordinary administrative regulation will be filed simultaneously with this emergency administrative regulation.

ERNIE FLETCHER, Governor
FLOYD VAN COOK, Executive Director
LAJUANA WILCHER, Secretary
815 KAR 35:060E. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060.

RELATES TO: KRS 227A.010, 227A.060, 227A.080, 227A.100

STATUTORY AUTHORITY: KRS 227A.040(1)(8), 227A.060, 227A.100(9)

EFFECTIVE: March 31, 2005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227A.060 requires the Office of Housing, Buildings and Construction to promulgate administrative regulations to establish a process for the licensing of electrical contractors, electricians, and master electricians. This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians, and master electricians. This amendment will correct the hearing procedure, add section to include reciprocity applications, changes Experior testing provider to “a provider approved by the Office of Housing, Buildings and Construction”, and clarifies the applications for electrical contractor, electrician and master electrician licenses.

Section 1. Application Procedure. An applicant for licensure pursuant to KRS 227A.060 shall:
(1) Complete an application as required by Section 2 of this administrative regulation;
(2) Pay the application fee required by Section 3 of this administrative regulation;
(3) Provide verifiable evidence of experience and training as specified in Section 4 of this administrative regulation; and
(4) Provide evidence of passage of the examination required by Section 5 of this administrative regulation.

Section 2. Application Requirements. The applicant shall complete an application form, either Form SFM-EC-2 or Form SFM-EC-3 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 or employer identification number;
(7) Applicant's email address;
(8) Licenses held for;
(9) For master electrician or electrician, a listing of the applicant's experience in the electrical industry, including business name and address, job title and supervisor's name;
(10) For master electrician or electrician, 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 164.772(3);
(12) For master electrician or electrician licenses, a passport-sized color 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' compensation coverage and the policy number of each coverage.
(15) Applicants for reciprocity shall complete Form SFM-EC-4 and shall comply with the requirements set forth in the reciprocity agreement with the state in which they are licensed.

Section 3. Application and Renewal Fees. (1) The application fee shall be:
(a) $200 for an electrical contractor's license;
(b) $100 for a master electrician's license; or
(c) Fifty (50) dollars for an electrician's license.
(2) Application fees shall not be refundable.
(3) License renewal fees shall be:
(a) $200 for an electrical contractor's license;
(b) $100 for a master electrician's license; or
(c) Fifty (50) dollars for an electrician's license.
(4) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee.
(5) The late renewal fee shall be fifty (50) dollars.
(6) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a 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 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 did not issue electrical contractor's, master electrician's or electrician's licenses prior to June 24, 2003 if the business license indicates the applicant operated as an electrical contractor or worker;
(c) A sworn affidavit, on the affidavit'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; or
3. An employer who employed the applicant as an electrician or a master electrician;
(d) 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. Examinations. (1) Applicants for an electrical contractor's license shall pass the "Kentucky Electrical Contractor Examination" developed and administered by the International Code Council [Exterior-Business-and-Law-Electrical-Examination No.:201-2001] with a score of at least seventy (70) percent.
(2) Applicants for a master electrician's license shall pass the "Kentucky Master Electrician Examination" developed and administered by the International Code Council [Exterior-Master-Electrician-Examination No.:2011-2014] with a score of at least seventy (70) percent;
(3) Applicants for an electrician's license shall pass the "Kentucky Electrician Examination" developed and administered by the International Code Council [Exterior-Journeyman-Electrical-Examination No.:2012-2014] with a score of at least seventy (70) percent.
(4) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examination developed and administered by the International Code Council. The person or group submitting the examination must demonstrate that the examination covers the same material and require the same level of knowledge as the International Code Council examinations.

Section 6. Appeal Procedure. (1) Applicants denied a license may appeal the decision to the Executive Director of the Office of Housing, Buildings and Construction [Exterior-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 Executive Director of the Office of Housing, Buildings and Construction [Exterior-Electrical-Advisory Board].
(3) The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Executive Director [Exterior-Electrical-Advisory Board], who [whom] may adopt it, amend it or substitute their [its] own decision based upon the evidence.
Section 7. 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 applicant shall provide proof of workers' compensation insurance by providing:
   (a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider;
   or
   (b) 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 cancelled, terminated, or not renewed [non-renewed]; or
   (b) The policy limits are lowered.

(4) Electrical contractors shall 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.

Section 8. 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 renewal month shall be the month the license was issued.

(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 initial license renewal fee to reflect the actual [added] term of the initial license. [The pro rata license renewal fee shall 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 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 license is inactive.

(2) An electrical contractor licensee 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 license as inactive while having an active electrical inspector certification.

(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 by Reference. (1) The following material is incorporated by reference:
   (b) Form SFM-EC-3, "Master Electrician's and Electrician's License Application (March, 2005 [June, 2004] Edition)," Office of Housing, Buildings and Construction; and
   (c) Form SFM-EC-4, "Reciprocally Licensed Electrician Application," (March, 2005).

(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 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
(9) TIERING: Is tiering applied? Tiering was not used.

STATEMENT OF EMERGENCY
907 KAR 1:018E

This emergency administrative regulation is being promulgated to enable the Department for Medicaid Services (DMS) to establish a state maximum-allowable cost for any drug for which two (2) or more multisource drugs with a significant cost difference exist; to alter drug reimbursement to AWP minus fourteen (14) percent for generic drugs and AWP minus fifteen (15) percent for brand name drugs; to alter the dispensing fee from four (4) dollars and fifty-one (51) cents for all drugs to five (5) dollars for generic drugs and four (4) dollars and fifty (50) cents for brand name drugs; to revise the unit dose drug packaging payment to $0.02 per unit dose for a non-unit dose drug repackaged in unit dose form by a pharmacist; to allow one (1) dispensing fee per rolling twenty-four (24) day period for nursing facility service recipient per drug except for certain circumstances; to establish for an outpatient service recipient, excluding supports for community living service recipients, that a maintenance drug shall be dispensed up to a ninety-two (92) day supply with only one (1) dispensing fee allowed for the maintenance drug refill within the ninety-two (92) day time period; to establish that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and to add gross amount due to drug reimbursement options. This action must be taken on an emergency basis to ensure the viability of the Medicaid Program and to best utilize the program's resources in serving the health, safety and welfare needs of Medicaid recipients. 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 may be jeopardized due to a lack of funding or provider accessibility. This emergency administrative regulation differs from the emergency administrative regulation filed with the Legislative Research Commission on January 28, 2005 in that it alters drug reimbursement to AWP minus fourteen (14) percent for a generic drug and AWP minus fifteen (15) percent for a brand name drug and in that it alters the dispensing fee from four (4) dollars and fifty-one (51) cents for all drugs to five (5) dollars for generic drugs and four (4) dollars and fifty (50) cents for brand name drugs; and in that it allows up to four (4) dispensing fees within a rolling twenty-four (24) day period for legend intravenous drugs. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Emergency Amendment)

907 KAR 1:018E. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5633, 205.5635, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256a, 1396a-d


EFFECTIVE: March 30, 2005

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, 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 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 205.6316(4) requires the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees.

Section 1. Definitions. (1) "A-rated generic product" means a product that the FDA has found to be bioequivalent.

(2) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally recognized comprehensive drug data file for which the department has contracted.

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

(4) "Direct price" means the estimated acquisition cost for which a retailer can purchase a drug product directly from the manufacturer as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

(5) "Dispensing fee" means a professional fee paid to reimburse pharmacy for costs associated with the dispensing of a prescribed drug.

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

(7) "Gross amount due" means the total price of a drug claimed from all sources, which includes the ingredient cost paid and which may include the dispensing fee paid and or the incentive amount paid. "Inpatient-dosage-form" means a covered drug item and/or an oral tablet, oral capsule or inhaler.

(8) "Wholesale acquisition cost" or "WAC" means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) [Except as specified in subsection (4) of this section, reimbursement to a participating provider shall be comprised of a dispensing fee and the cost of the drug product.] If a recipient is required to pay a copayment for a drug in accordance with 907 KAR 1:004, the reimbursement to the participating provider [for the dispensing fee] shall be reduced by one (1) dollar [the amount of the copayment].

(2) The department; [shall]

(a) May establish a state maximum-allowable cost for a drug:
   1. If two (2) or more A-rated therapeutically-equivalent, multisource, noninnovator drugs with a significant cost difference exist for the given drug; and
   2. By reviewing the pricing sources AWP, WAC, and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted and utilizing the weighted majority of volume purchased; and

(b) Shall maintain a current listing of drugs and their corresponding data maximum-allowable costs via a link from the department web site located at the following address:

http://www.chfs.ky.gov/dms/

(3) An appeal of a state maximum-allowable cost price for a drug shall be as follows:

(a1) The provider shall email or fax a completed "MAC Price Inquiries and Research Request Form" (which is available at the department and at the website address:

http://kentucky.fhs.com/providers/documents.asp by clicking on "MAC Price Inquiries and Research Request Form or via the specific website address:

http://kentuckyfhs.com/Downloads/providers/KYRx_MACResearchRequestForm.pdf) to First Health Services Corporation. The email address is rebate@fhs.com and the fax number is 804-217-7911; or

(b) The provider shall contact the First Health Services Corporation technical call center at 1-800-432-7005 and provide information regarding the appeal including the national drug code for the drug in question.

(b) An appeal of a state maximum-allowable cost price for a drug shall be investigated and resolved within three (3) business days;
(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the state maximum-allowable cost price.

(d) The state maximum-allowable cost price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the state maximum-allowable cost price prescription in question, if:

1. It is determined that no manufacturer exists in the price range referenced in subsection (3)(c) of this section; or

2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider;

(e) When the change in state maximum-allowable cost price for a price that is adjusted becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment:

1. For which a federal upper limit does not exist; and

2. For which at least one (1) readily and nationally available A-rated generic product exists;

(b) Determine a state maximum-allowable cost for a drug by identifying the lowest price for a drug regardless of manufacturer, including both generic and brand-name, and multiplying that price by 150 percent. The lower price for a drug shall be:

1. Identified in a nationally-recognized comprehensive drug data file for which the department has contracted; and

2. Determined by reviewing the pricing-sources determinations of AWP, WAC, and direct price for the drug;

(c) Remove a state maximum-allowable cost for a drug if a federal upper limit becomes available for the drug; and

(d) Maintain a current listing of drugs and their corresponding state maximum-allowable costs at the department website located at the following address:


(3) A provider may submit drug acquisition cost or product availability information to the department. Upon receipt of the information, the department shall:

(a) Review the reference product and its corresponding state maximum-allowable cost value to ensure it reflects an accurate market price and availability; and

(b) May consider adjusting or removing the state maximum-allowable cost for the drug if the department determines that the state maximum-allowable cost does not accurately reflect current market price and availability.

(4) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List [Formulary] established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer. The drug shall be provided based on a prior authorized exemption from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and coding information obtained from a nationally-recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized:

(c) Reimbursement for a drug shall be the lesser of:

1. The federal upper limit, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition; and

2. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition; and

3. The estimated acquisition cost (EAC) which shall:

a. For a generic drug equal the AWP minus fourteen (14) percent, plus a dispensing fee and, if applicable, a unit dose addition; and

b. For a brand name drug equal the AWP minus fifteen (15) percent, plus a dispensing fee and, if applicable, a unit dose addition; and

4. The usual and customary billed charge; or

5. The gross amount due.

(d) Reimbursement for the dispensing of an emergency supply of a drug shall be:

1. Made only outside normal business hours of the depart-

ment's Drug Prior Authorization office and as permitted in accordance with 907 KAR 1:019, Section 4; and

2. The lesser of:

a. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition; and

b. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition; and

c. The estimated acquisition cost (EAC) which shall:

i. For a generic drug, equal the AWP minus fourteen (14) percent, plus a dispensing fee and, if applicable, a unit dose addition; and

ii. For a brand name drug, equal the AWP minus fifteen (15) percent, plus a dispensing fee and, if applicable, a unit dose addition;

and

3. The usual and customary billed charge; and

4. The gross amount due. (Except as provided in paragraphs (d) and (e) of this subsection, reimbursement for a drug shall be the lesser of:

1. The federal upper limit plus a dispensing fee and unit dose add-on as appropriate;

2. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate if a federal upper limit is unavailable;

3. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or

4. The usual and customary billed charge.

(e) Except as specified in paragraph (d) of this subsection, if a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand-name drug for which one (1) or more generic forms of the drug are available and has written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement shall be the lesser of:

1. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or

2. The usual and customary billed charge.

(e) 1. Reimbursement for the dispensing of an emergency supply of a drug shall be made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4.

2. Except as specified in subparagraph 3 of this paragraph, reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:

a. The federal upper limit plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;

b. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate; and

c. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or

3. If a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand-name drug for which one (1) or more generic forms of the drug are available and has written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:

a. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or

b. The usual and customary billed charge.

3. If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill [reimbursement shall not include a dispensing fee].
(f) Reimbursement shall be denied if:
1. The recipient is ineligible on the date of service;
2. The drug is excluded from coverage in accordance with 907 KAR 1:019, Section 3; or
3. Prior authorization is required by the department and has been denied or has not been requested.

3. If a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, there shall not be more than one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day period unless:
1. The drug is a Schedule II, III, or IV controlled substance or a legend intravenous drug, in which case up to three (3) additional dispensing fees shall be allowed;
2. The drug is a non-narcotic drug, form, in which case one (1) additional dispensing fee shall be allowed;
3. The prescribed dosage has been changed, in which case one (1) additional dispensing fee shall be allowed; or
4. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee. [;]

1. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid program as a maintenance drug unless the prescribed dosage has been changed; and
2. Except as specified in subparagraphs 1 and 3 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and
3. Four (4) dispensing fees per drug within a calendar month for a non-narcotic dosage form, a Schedule II, III or IV controlled substance or a legend intravenous drug.

(h) For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(i) A maintenance drug shall be dispensed to an outpatient service recipient, except for an individual receiving supports for community living services, up to a ninety-two (92) day supply with only one (1) initial dispensing fee and one (1) refill dispensing fee allowed within the ninety-two (92) day time period unless the department determines that it is in the best interest of the recipient to allow any additional dispensations or dispensing fees, and
2. For an outpatient service recipient the department shall dispense services through the Supports for Community Living Program and shall not be more than:
   a. [1.] One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
   b. [2.] Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or
   c. [3.a.] Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or
   c. [3.b.] Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(j) For a personal care recipient there shall not be more than:
1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a Schedule II, III or IV controlled substance; or
3. a. Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed; or
   b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.

(k) [l] Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:
   1. National Drug Code (NDC); or
   2. Generic name, strength, and dosage form.

(l) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

(m) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(n) If payment is made for a drug for which there is no prior authorization as required in accordance with 907 KAR 1:019, the provider shall reimburse the department the amount of the payment.

(o) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(p) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.

(q) Pursuant to KRS 205.522, prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.

(r) If a Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.

(s) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall submit a Third-party Liability Liability Form to the department's fiscal agent.

(t) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

(u) A pharmacy of a covered entity as defined in 42 U.S.C. 256b which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual acquisition cost for a drug; and

(v) The department shall reimburse the pharmacy's actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.

(w) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:
   (x) The pharmacy shall submit [bill] its usual and customary amount and gross amount due for a drug; and
   (y) The department shall reimburse for a drug in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.561

(2) Except as provided in subsection (3) of this section and in accordance with KRS 205.561, [based on the conclusion of the dispensing fee study of the report conducted in accordance with KRS 205.561,] the dispensing fee, unless excluded by Section 2(4)(e) of this administrative regulation, shall be:

(a) Five (5) dollars for four (4) dollars and fifty-one (51)-cents per prescription for a generic drug reimbursed through the Outpatient Drug Program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022; and

(b) Four (4) dollars and fifty (50)-cents per prescription for a brand name drug reimbursed through the outpatient program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.

(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.
1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of two (2) cents per unit dose for a nonunit dose drug repackaged in unit dose form by the pharmacist:

1. Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer;
2. Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist.

(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars for a generic drug or four (4) dollars and fifty (50) cents for a brand name drug [four (4) dollars and fifty-one (51) cents] is not paid due to monthly limits on dispensing fees or in accordance with Section 24(4)(e) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:
(a) The maximum allowable cost or estimated acquisition cost established in Section 24(4) of this administrative regulation; or
(b) The physician's usual and customary amount or gross amount due [charge to the general public] for the drug; or
(c) The federal upper limit.

(2) In accordance with 907 KAR 3:010 for a free immunization through the Vaccines for Children Program.


(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.

SHANNON TURNER, J.D., Commissioner
DUANE L. KILTY, JR., Ph.D., Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
APPROVED BY AGENCY: March 14, 2005
FILED WITH LRC: March 30, 2005 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7673.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining reimbursement for drugs through the Medicaid 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 method for determining reimbursement for drugs through the Medicaid outpatient pharmacy program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid 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 includes establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; altering drug reimbursement to AWN minus 14% for generic drugs and AWN minus 15% for brand name drugs; altering the dispensing fee from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing one dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient, except for a supports for community living service recipient, that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid program in order to maintain the financial viability of the Department for Medicaid Services. This amendment would bring Medicaid more in line with other state Medicaid plans as well as the commercial sector.
(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 state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; altering drug reimbursement to AWN minus 14% for generic drugs and AWN minus 15% for brand name drugs; altering the dispensing fee from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient, except for a supports for community living service recipient, that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.
(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; altering drug reimbursement to AWN minus 14% for generic drugs and AWN minus 15% for brand name drugs; altering the dispensing fee from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient, except for a supports for community living service recipient, that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers and drug manufacturers 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: Pharmaceutical providers or manufacturers shall be affected in that drug reimbursement will change to average wholesale price (AWP) minus 14% for generic drugs and AWP minus 15% for brand name drugs; that a state maximum-allowable cost may be established for any drug for which 2 or more multisource drugs with a significant cost difference exist; in that the dispensing fee is being altered from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill. Long-term care pharmaceutical providers will be impacted in that the long-term care repackaging fee will be $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist. Providers of maintenance drugs to outpatient service recipients will be affected in that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period. Additionally, this administrative regulation allows 1 dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances and clarifies that over-the-counter drugs dispensed to nursing facility service recipients shall not be reimbursed via the Medicaid outpatient pharmacy program, but rather shall be considered part of nursing facility reimbursement.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $31.5 million annually ($21.98 million federal funds; $9.52 million state funds) for the current fiscal year.

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation could reduce expenditures by at least as much as $31.5 million annually ($21.98 million federal funds; $9.52 million state funds) plus additional as yet undetermined amounts depending upon generic drug dispensing/utilization.

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund 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: Neither an increase in fees nor 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 neither establishes nor increases any fees.

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. This administrative regulation complies with federal statutes/regulations governing the Medicaid Program and drug reimbursement.

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter (than federal) requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter (than federal) requirements.
VOLUME 31, NUMBER 11 – May 1, 2005
ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE
ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET
State Board of Accountancy
(As Amended at ARRS, April 12, 2005)


RELATES TO: KRS 325.261(4) [1994 Ky. Acts ch. 248, sec. 4]
STATUTORY AUTHORITY: KRS 325.240
NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.261 establishes the standards for licensure as a certified public accountant. This administrative regulation describes the experience to be documented when one applies to become a certified public accountant.

Section 1. Definitions. (1) "One (1) year" means the completion of 2,000 hours of employment [work] obtained after the award of a baccalaureate degree during an employment period of not less than twelve (12) months, excluding [the hours of employment shall not include] any leave or holiday time.

(2) "Verification" means a [an actively licensed] certified public accountant as described in KRS 325.261(4) [of this or any state] confirming the truth or accuracy of the applicant's accounting or attest experience.

Section 2. (1) An applicant for licensure shall have submitted by the certified public accountant verifying the experience a "Certificate of Experience".

(2) If the applicant has been employed by more than one (1) employer to meet the experience requirement described in KRS 325.240 and the administrative regulation, a certificate shall be submitted for each employment situation.

Section 3. Experience Verification. The certificate of experience shall include the following information verified by a certified public accountant as described in KRS 325.261(4) [of an actively licensed certified public accountant]:

(1) The name and address of the employing firm, company, agency, or institution of higher education;

(2) The month, day and year the employment began, and the month, day and year the employment was terminated or the experience was completed;

(3) Total number of hours worked during the employment period excluding holiday or leave time;

(4) A brief description of the applicant's job duties;

(5) The applicant's working titles during employment; and

(6) The signature of the verifying certified public accountant which attests to the truth and accuracy of the statements made regarding the applicant's experience.

Section 4. Documentation and Verification of Applicant Experience. A false or misleading statement made by a certified public accountant on a certificate of experience shall constitute a violation of KRS 325.340(1)(h).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Monday through Friday, between 8 a.m. to 4:30 p.m.

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.

JIM SPARROW, CPA, President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 9, 2005 at 9 a.m.
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) 595-4281.

GENERAL GOVERNMENT CABINET
State Board Of Accountancy
(As Amended at ARRS, April 12, 2005)

201 KAR 1:190. Computer-based examination sections, applications, and procedures.

RELATES TO: KRS 325.261(5), 325.270
STATUTORY AUTHORITY: KRS 325.240, 325.270
NECESSITY, FUNCTION, AND CONFORMITY: KRS 325.270 requires the board to conduct examinations for individuals seeking to become certified public accountants. KRS 325.261(5) requires passage of an examination prior to a person becoming licensed as a certified public accountant and for the board to determine the subjects to be included on the examination. This administrative regulation establishes the subjects, also referred to as sections, to be included on the examination, the procedures, and fees associated with the administration of the examination.

Section 1. Definitions. (1) "Accounting course" means a course that contains in the course prefix, or title, the word accounting or some variation.

(2) "AICPA" means the American Institute of Certified Public Accountants, the entity that prepared and graded the paper and pencil based Uniform CPA Examination and now prepares and grades the computer-based certified public accountant examination.

(3) "Business-related subjects" means courses that contain in the course prefix or title an indication that the course subject matter is one (1) of the following: business, finance, marketing, management, economics, computers, statistics, or accounting.

(4) "Conditional credit" means the procedure utilized by the board for the paper and pencil based licensure examination that allowed an exam candidate who received a passing score of seventy-five (75) or higher on two (2) or more of the sections of the examination and a grade of fifty (50) or higher on each section taken but not passed during the same examination to retain the passing scores earned only for the next six (6) examinations regardless of whether the candidate sat for the future examinations.

(5) "Major or concentration in accounting" means a minimum of thirty-nine (39) semester hours in business-related subjects of which twenty-seven (27) semester hours shall consist of accounting subjects.

(6) "NASBA" means the National Association of State Boards of Accountancy, which operates a nationwide computer data bank for candidates applying to sit for the computer-based certified public accountants examination.

(7) "Official transcript" means an official record from a college or university that specifies the college course work completed, degree awarded, the date the degree was awarded, and contains an authorizing signature or seal.

(8) "Prometric or its successor" means the testing service in charge of administering the computer-based certified public accountants examination.

(9) "Quarter hour" means 66'100ths of a semester hour.

(10) "Testing window" means the two (2) months out of each three (3) month period during a calendar year, beginning in April
2004.) when an exam candidate may sit for the computer-based certified public accountants examination.

11) "Uniform CPA Examination" means the paper and pencil based version of the licensure examination administered by the board prior to January 1, 2004.

Section 2. [Applicability Date. Applications for the first administration of the computer-based certified public accountants licensure examination may be submitted to the board beginning January 5, 2004. The first administration of the computer-based certified public accountants examination is scheduled to occur April 5, 2004.

Section 3.] Examination Sections. The board has adopted the computer-based certified public accountants examination prepared by the AICPA as the examination every candidate seeking to receive a license shall sit for and obtain a passing grade. The sections to be included on this examination shall be:

(1) Auditing and attestation. This section replaces the auditing section on the paper and pencil based examination;
(2) Financial accounting and reporting;
(3) Regulation. This section replaces the accounting and reporting section on the paper and pencil based examination; and
(4) Business environment and concepts. This section replaces the business law and professional responsibilities section on the paper and pencil based examination.

Section 3. [4.] Grading Procedures and Acquiring Credit for Obtaining a Passing Score. (1) An exam candidate shall receive a passing score on all sections of the examination to be eligible to receive a license.

(2) The passing score shall be seventy-five (75) on each section. An exam candidate may retain a passing score on any section even though the candidate may have sat for and failed other sections of the examination at the same sitting.

(3) Subject to the exception contained in subsection (4) of this section, an exam candidate may sit for one (1) or any number of the four (4) sections of the examination at a time during a testing window.

(4) An exam candidate shall not sit more than once for the same section of the examination during a testing window.

(a) Accounting and Reporting to Regulation;
(b) Financial Accounting and Reporting remains the same;
(c) Auditing to Attesting and Regulation; and
(d) Business Law and Professional Responsibilities to Business Environment and Concepts.

(5) Transition period for conditional credit.

(a) An exam candidate awarded conditional credit on the paper and pencil examination shall be allowed a transition period to complete the remaining sections of the computer-based certified public accountants examination.

(b) The transition period shall begin to run January 1, 2004 and last until the candidate utilizes the opportunities to sit for the examination remaining to him or her if the paper and pencil examination was [were] still in effect.

(c) This shall be six (6) testing windows or less, or the number of opportunities remaining under the paper and pencil examination multiplied by six (6) months, whichever occurs first.

(d) This time period shall control even when a passing score on a section of the computer-based examination is received [but only if the use of this transitional time period does not operate to decrease the eighteen (18) month time period referred to in subsection (7) of this section].

(e) Failure to receive a passing score on the remaining sections of the examination at the conclusion of this transition period shall result in the conditional credit expiring.

(7) When an exam candidate without conditional credit initially [who] receives a passing score on a section of the computer-based certified public accountants examination the candidate shall have a minimum of eighteen (18) months following the last day [date] of the month in which the administration of that examination section to obtain a passing score on the remaining sections of the computer-based examination.

(b) Failure to receive a passing score on the remaining sections of the computer examination within the eighteen (18) months shall result in the expiration of the initial passing score but not other sections passed during that eighteen (18) month period.

(c) All sections of the computer-based examination shall be passed during an eighteen (18) month time period for the candidate to be considered to have passed the examination.

(8) An additional number of opportunities to sit for the examination and maintain any earned conditional credit or passing scores beyond the restrictions contained in this section may be granted at the discretion of the board for good cause.

Section 4. [5.] Initial Examination Applicants. An applicant shall submit an application to sit for the examination. The applicant shall have a Kentucky street address and submit:

(a) A completed "Application for the Certified Public Accountant Examination" that includes the following information:

(b) The applicant's name, address, primary and secondary telephone numbers, date of birth, mother's maiden name, Social Security number. If the applicant does not have a Social Security number then the candidate shall submit an identification number issued by a federal agency that has authorized the candidate to enter the United States;
(c) The state of which the applicant is a legal resident;
(d) An e-mail address;
(e) Whether the applicant has:

1. Ever changed his or her name; and if so, a list of the prior names;
2. Taken the Uniform CPA Examination or the computer-based certified public accountant examination before; and if so, the date and state where it was taken;
3. Been convicted, pleaded guilty or no contest to a felony or misdemeanor, other than a minor traffic violation; and if so, a copy of the judgment, sentence of conviction, and a letter of explanation shall be attached to the application;
4. Been denied admission to the Uniform CPA Examination or the computer-based certified public accountant examination; and if so, a letter explaining the reason, date, and jurisdiction of denial shall be attached to the application; and
5. Had disciplinary action taken against any professional license; and if so, a letter indicating the jurisdiction, date of action, and an explanation of the circumstances shall be attached to the application;

(e) The specific section or sections of the examination the applicant is applying to take;

(f) If the applicant requests accommodations to the exam administration because of a disability that limits one (1) or more of his or her major life activities (e.g., walking, hearing, speaking, seeing, reading, or writing), a description of the disability and requested accommodations from the applicant and written documentation from an appropriately licensed health care professional supporting the request shall be attached to the application;

1. The documentation shall include a diagnosis of the disability and a specific recommendation and justification for the requested accommodation.

2. The board shall not be responsible for the costs of obtaining the diagnosis and recommendation, but shall be responsible for the costs of reasonable accommodations that are provided to the applicant.

(g) The names of the colleges from which a transcript shall be attached to the application;

(h) The signature of the applicant certifying that:

1. The information in the application is true;
2. The applicant:

a. Is applying for admission to the computer-based certified public accountants examination in conformity with Kentucky law;

b. Has submitted the required application, attachments, and fees;

c. Has read and agrees to abide by the applicable laws and administrative regulations; and

d. A certification by a notary public that the application was subscribed and sworn to before the notary.

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(2) An official transcript which evidences completion of the educational requirements specified in KRS 325.261 [and the awarding of a baccalaureate or master's degree] which includes a major or concentration in accounting as defined in this administrative regulation.

(a) The educational requirements shall have been completed at:
   1. A college or university within the United States that was accredited by one (1) of the following accrediting associations at the time the degree was granted:
      a. Middle States Association of Colleges and Schools;
      b. North Central Association of Colleges and Schools;
      c. New England Association of Schools and Colleges;
      d. Northwest Association of Schools, Colleges and Universities;
      e. Southern Association of Colleges and Schools; or
      f. Western Association of Schools and Colleges;
   2. The board may consult with a Kentucky state-funded four (4) year institution of higher education for assistance in evaluating the hours purportedly earned and the accreditation of an educational institution;
   3. A postsecondary educational institution outside the United States whose course credits are certified by the Foreign Academics Credentialing Service (FACS) or another credentialing agency that is a member of the National Association of Credential Evaluation Services, Inc.

(b) The certification required by subparagraph (a)3 of this subsection shall state that:
   1. Foreign degree is equivalent to a baccalaureate or master's degree earned in an accredited United States college or university as described in KRS 325.261 and this administrative regulation; and
   2. Applicant had a major or concentration in accounting as defined in this administrative regulation.

(c) A copy of the "Request for Advisory Evaluation of Foreign Credentials" form that FACS requires an applicant to use to request certification from its service.

(3) A fee in the amount of:
   (a) Thirty (30) dollars for the application; and
   (b) Thirty (30) dollars for each section of the examination the candidate intends to take.

(4) The fees shall be nonrefundable and payment shall be in the form of a check or money order made payable to the "Kentucky State Board of Accountancy". If the institution the check or money order is drawn on does not honor the check or money order the application shall be deemed incomplete and returned.

Section 5. [6.] (1)(a) The executive director of the board shall review all applications.

(b) If the executive director determines the application satisfies the requirements of this administrative regulation, the application shall be approved.

(c) If the executive director refuses to approve the application, it shall be submitted to the board for its review and consideration at its next regularly scheduled meeting.

(2) Applications approved by the executive director or the board shall be forwarded to NASBA for entry into the data bank operated by that association. NASBA shall then advise the board that the candidate is eligible to schedule a date and time to sit for the examination with Prometric or its successor.

(3) The executive director shall notify a candidate that he or she is eligible to contact Prometric or its successor to schedule a date and time to sit for the examination. This notification shall be known as a notice to schedule.

(4)(a) A candidate shall have six (6) months from the date of issuance by the board of a notice to schedule to sit for the sections of the examination approved by the executive director or the board.

(b) The notice to schedule shall expire when the candidate has sat for the sections approved by the executive director or the board or at the conclusion of the six (6) month period whichever comes first.

(c) A notice to schedule may be extended for good cause.

(d) To obtain approval to sit for additional sections of the examination a candidate shall submit a reexamination application as described in Section 9 [40] of this administrative regulation.

(5)(a) The exam candidate shall pay all costs associated with sitting for the computer-based certified public accountants examination charged by NASBA, Prometric or its successor, and the AICPA.

(b) The costs shall be paid no later than ninety (90) days following the date of issuance of an invoice from NASBA.

(c) Failure to pay these fees prior to the end of the ninety (90) day time period shall result in the cancellation of the notice to schedule and require the candidate to submit a reexamination application accompanied by the appropriate fees.

Section 6. [7.] Examination Rules of Conduct. (1) An examination candidate shall present two (2) forms of current and valid identification at the Prometric or its successor testing examination center. One (1) of these forms of identification shall be a state driver's license, a picture identification card issued by a state motor vehicle licensing agency, or a passport.

(2) The license or picture identification card shall be currently in effect and shall contain a photograph and signature.

(3) Failure to bring this identification to the examination center shall result in the candidate being prohibited from sitting for the examination.

(4) An examination candidate shall comply with all directives of the staff at the Prometric or its successor testing center and the rules of conduct in effect at the testing center.

(5) An examination candidate shall not:
   (a) Use written materials or mechanical aids inside or outside the examination room during the course of the examination;
   (b) Communicate with any person, other than the testing center staff, inside or outside the examination room, during the course of the examination;
   (c) Copy answers or allow his or her answers to be copied;
   (d) Substitute an individual in his or her place;
   (e) Disclose in any manner any information concerning the examination questions or content;
   (f) Falsify or misrepresent educational credentials or other information required for admission to the examination; or
   (g) Fail to follow written or announced examination administration procedures.

Section 7. [8.] Examination Misconduct Penalties. An examination candidate who violates any of the provisions of this administrative regulation may be prohibited from:

(1) Further participation in that particular examination section;

(2) Receiving grades after sitting for any examination; or

(3) Sitting for subsequent examinations.

Section 8. [9.] An exam applicant shall immediately notify the board of a change in his or her mailing address.

Section 9. [40.] Reexamination Applicants. (1) Upon request the board shall mail a reexamination application to every candidate who fails to pass the computer-based examination.

(2) The reexamination application shall be mailed to the most recent address provided by the candidate.

(3) The board shall not be responsible if the reexamination application is not delivered by the United States Postal Service.

(4)(a) To obtain approval to sit as a reexam candidate, the individual shall return the reexamination application to the board. The reexamination application shall contain the following information:

   1. The applicant's name, a Kentucky street address, daytime telephone number, date of birth, mother's maiden name and Social Security number. If the applicant does not have a Social Security number then the candidate shall submit an identification number issued by a federal agency that has authorized the candidate to enter the United States;

   2. The specific sections of the examination the applicant is requesting to sit for;

   3. A statement that the required fee is attached;

   4. If the applicant requests accommodations to the exam administration because of a disability, whether the required information is on file or is attached to the reexamination application; and
5. The applicant's signature.

(b) The reexamination application shall be received in the
board's office prior to the reexamination candidate being consid-
ered eligible to sit for any section of the exam.

(5)(a) The candidate shall return the completed reexamin-
ation application with the reexamination fee.

(b) The reexamination fee shall be thirty (30) dollars per sec-
tion. The reexamination fee shall be nonrefundable and paid by
check or money order made payable to the Kentucky State Board
of Accountancy. If the institution the check or money order is drawn
on does not honor the check or money order the application shall
be deemed incomplete and returned.

(6) A reexamination candidate who fails to comply with
the requirements of this section shall not be permitted to sit for reex-
amination.

(7) The procedures and policies in Section 5 [6] of this admin-
istrative regulation shall be applicable to a reexamination applica-
tion.

(b) The reexamination candidate shall comply with the re-
quirements of Sections 6, 7, and 8 [7, 8, and 9] of this admin-
istrative regulation.

Section 10. [14] - The executive director shall review examina-
tion grades received from NASBA before they are released to a
candidate. Upon approval of the executive director, a copy of an
examination candidate's grades shall be mailed to him or her at
the last known address provided by the candidate.

Section 11. [12] - On the date this administrative regulation
becomes effective examination candidates without conditional
credit, with less than 150 college semester credit hours and who
on the effective date are eligible to apply sit for the computer-
based examination shall have until March 31, 2007 to successfully
clean complete all sections of the examination. Failure to receive a
passing score on all sections of the examination by March 31,
2007 shall result in any credit earned for successfully passing any
sections of the examination expiring and the candidate being pro-
hibited from sitting again for the examination until the candidate
has obtained 150 college semester credit hours with a major or
concentration in accounting as defined in this administrative regu-
lation.

Section 12. [43] Incorporation by Reference. (1) The following
material is incorporated by reference:

(a) "Application for the Certified Public Accountant Examina-
(b) "Reexamination Application for the Certified Public Ac-
countant Examination", 2005 [2003], Kentucky State Board of Ac-
countancy; and
(c) "Request for Advisory Evaluation of Foreign Credentials",
2003.

(2) These documents may be inspected, copied, or obtained,
subject to applicable copyright law, at the board office, 332 E.
Broadway, Suite 310, Louisville, Kentucky 40202, between 8:30
a.m. and 4:30 p.m., Monday through Friday.

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.

JIM SPARROW, CPA, President
APPROVED BY AGENCY: February 7, 2005
FILED WITH LRC: February 9, 2005 at 9 a.m.
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)
595-4281.

GENERAL GOVERNMENT CABINET
Board of Architects
(As Amended at ARRS, April 12, 2005)

201 KAR 19:035. Qualifications for examination and licen-
sure.

RELATES TO: KRS 323.050(2), (3), 323.060, 323.120(1)(a)-(i)

STANWORTH AUTHORITY: KRS 323.210(1)(b), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
323.210(1)(b) and (2) require the board to promulgate administra-
tive regulations governing the contents and conduct of examina-
tions, the method and time for filing applications, and the time
within which an applicant shall be examined after his application
has been filed. This administrative regulation establishes the pre-
requisites for taking the examination and obtaining a license.

Section 1. Eligibility to Take the State Board Examination. A
person who possesses the qualifications prescribed in KRS
323.050, and this administrative regulation, shall be eligible to take
the examination.

Section 2. General Requirements. (1)(a) The board shall verify
the good moral character of an applicant for examination with em-
ployers and registered architects who have knowledge of his moral
character.

(b) An applicant shall not be considered to be of good moral
character if he has:
1. Committed an act specified in KRS 323.120(1)(a) through (i)
(6));
2. Chronic alcoholism, persistent drug abuse, or an act of be-
havior that would, if the applicant were licensed, jeopardize or
impeach his judgment to meet professional responsibility as an ar-
chitect to the public welfare and safety; or
3. Violated a provision of KRS Chapter 323 or a board admin-
istrative regulation either before or after admission to the examina-
tion.

(c) If an applicant has violated the registration laws of another
jurisdiction, the board shall determine whether the violation ad-
versely affected the moral character of the applicant.

(2) To be eligible for examination, an applicant shall submit to
the board college transcripts and verification from employers and
architects that he has:
(a) Met the requirements of KRS 323.050 and 323.060 and this
administrative regulation; and
(b) Had well diversified and satisfactory training in architectural
practice as evidenced by completion of the first year of the Intern
Development Program specified in Section 4 of this administrative
regulation.

(3) The documentation required by subsection (2) of this sec-
tion shall be verified, compiled, and transmitted in bound record
form by the National Council of Architectural Registration Boards.

Section 3. Education Requirements. (1) An applicant who has
met the requirements of Section 2 of this administrative regulation
shall in addition:
(a) Hold a [first—professional] degree in architecture from a
degree program that has been accredited by the National Archi-
tectural Accrediting Board not later than two (2) years after termi-
nation of enrollment; or
(b) Have satisfied the education standard specified in the Na-
tional Council of Architectural Registration Boards pamphlet
"NCARB Education Standard", by earning five (5) years of equiva-
 lent education credits as determined by the experience and educa-
tion definitions of Table A and its footnotes.

(2) The minimum five (5) years equivalent education credits
shall be accumulated prior to June 1, 1992.

Section 4. Training Requirements for Licensure. (1) An appli-
cant who has passed the examination shall have satisfied the In-
tern Development Program training requirements as provided by
Chapter 1, Section 3 of the National Council of Architectural Reg-
istration Boards "Handbook for Interns and Architects" prior to final
application for license.
(2) The documentation required by subsection (1) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Handbook for Interns and Architects" 1996-1997 Edition, National Council of Architectural Registration Boards; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects [State board of Examiners and Registration of Architects], 301 East Main Street, Suite 860, Lexington, Kentucky 40507 (844 Corporate Drive, Suite 2008, Lawrence, Kentucky 40565), Monday through Friday, 8 [9] a.m. to 4:30 [5] p.m.

JILL SMITH, President
APPROVED BY AGENCY: September 14, 2004
FILED WITH LRC: February 9, 2005 at 4 p.m.
CONTACT PERSON: Ms. Jill Smith, Board Chair, 301 East Main Street, Suite 860, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 246-2431.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, April 12, 2005)

301 KAR 2:132. Elk depredation permits, landowner cooper- erator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.390, 150.395, 150.990(11)
STATUTORY AUTHORITY: KRS 150.177, 150.390(3), (4)
NECESSITY, PURPOSE, AND CONFORMITY: KRS 150.390(3) authorizes the department to promulgate administrative regulations establishing the conditions under which depredation permits for elk may be issued. This administrative regulation establishes the procedures to obtain a depredation permit to control elk causing property damage. KRS 150.390(4) authorizes the department to establish elk hunting seasons and requirements. This administrative regulation establishes the hunting requirements during the elk hunting season and establishes procedures for applying for and participating in elk quota hunts and the requirements for issuing landowner cooperative permits.

Section 1. Definitions. (1) "Antlered elk" means an elk with one (1) antler possessing four (4) or more antler points that are each at least one (1) inch long when measured from the main beam. The main beam shall count as one (1) point.
(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.
(3) "Elk" means a member of the species Cervus Elaphus.
(4) "Limited entry area" means a strategically-located and defined management unit, large in size and consisting of public and private holdings, where elk populations are encouraged to grow and expand, serving as the source areas for elk within the restoration zone. [These areas are] managed for reduced hunting pressure, and elk-hunting access is limited or restricted to specifically drawn and designated hunters. The limited entry areas are (either) the Begley/Redbird Limited Entry Area or the Starfire Limited Entry Area, each of whose boundaries are described in Section 4(4) of this administrative regulation.
(5) "Restoration area" means the Kentucky counties east of and including, Knox, Clay, Perry, Breathitt, Magoffin, Johnson, McCreary Martin, and Whitley.
(6) "Wild elk" means:
(a) An elk translocated and released by the department; or
(b) The progeny of an elk translocated and released by the department.
(7) "Zone-at-large" means any area within the sixteen (16) county restoration area except the limited entry areas.

Section 2. Elk Damage Control. (1) A person shall not kill or attempt to take or molest a wild elk that is causing property damage, except as specified in this administrative regulation.
(2) A person shall contact the department if he wants depredating wild elk removed from his property.
(3) Upon receipt of a damage complaint, the department shall:
(a) Verify that wild elk are causing the damage;
(b) Remove, destroy or authorize the destruction of the elk by the property owner or his designee; and
(c) The property owner or designee shall immediately contact the department upon destruction of the elk.
(4) A person authorized to destroy an elk under the provisions of this section shall not:
(a) Move the elk until he has attached a tag provided by the department to the carcass; and
(b) Remove the tag until the carcass is processed.

(1) A person may apply for a quota elk hunt permit December 1- July 31.
(2) A person may apply by purchasing an elk hunt drawing permit by visiting the department's website at fw.ky.gov, calling BassPro at 246-590-2401 or visiting a KDSS agent and providing the following:
(a) The applicant's Social Security number or driver's license number; and
(b) A ten ($10) dollar nonrefundable application fee.
(3) [If] Elk hunt drawing permits may be purchased after July 31 to allow potential out-of-zone elk hunters to take out-of-zone elk in compliance with the permit requirements set forth in Section 7 of this administrative regulation. Purchases made after July 31 shall [will] not be eligible for or entered into the hunt drawing.
(4) [If] An applicant may apply once. Duplicate applications shall result in disqualification.
(5) [If] The commissioner may:
(a) Extend the application deadline if technical difficulties with the application system prevent applications from being accepted for one (1) or more days during the application period; and
(b) Authorize the on-site sale of applications during promotional events or festivals.
(6) [If] There shall be no preference points.
(7) [If] There shall be a random electronic drawing.
(8) [If] The drawing and complete results shall be posted on the department's website by August 20 of each year.
(9) [If] If any individual who was drawn is disqualified for any of the reasons specified in this administrative regulation, an alternate shall be redrawn from the undrawn applicants.
(10) [If] A total of 102 [forty-one (41)] tags shall be awarded consisting of fifty-two (52) [twenty (20)] antlered and fifty (50) [twenty-one (21)] antlerless. Two (2) of the antlered tags shall be Special Commission Permits. Additional either-sex landowner cooperator permits will be issued with approval of the commission.
(11) [If] A resident elk tag shall cost twenty-five (25) dollars.
(12) [If] A nonresident elk tag shall cost $300.

Section 4. Drawn Applicants and Limited Entry Areas. (1) A person whose name is selected pursuant to this administrative regulation or a person who receives or is transferred a landowner cooper- erator permit or a special commission permit issued pursuant to 301 KAR 3:100 shall participate in the elk quota hunt as assigned.
(2) An individual selected to participate in a quota hunt or who receives or is transferred a landowner cooper- erator permit or a special commission permit may be accompanied by up to two (2) other individuals who may assist in the retrieval of the harvested elk.
(3) Drawn applicants shall be assigned:
(a) The sex of the elk they are permitted to take; and
(b) The area they are permitted to hunt, either a limited entry area or zone-at-large.
(4) The limited entry areas shall be designated as follows:
(a) Begley/Redbird Limited Entry Area: starting at the Thousandsticks exit on the Hal Rogers Parkway, the boundary proceeds east along Kentucky Route 118 to the junction of U.S. Route 221 at
Hyden, Kentucky. The boundary then proceeds south along Highway 421 to the intersection of Highway 421 and Kentucky Route 66. The boundary then goes north following Route 66 to the intersection of Route 66 and Highway 421/Route 80. The boundary then proceeds east along the Hal Rogers Park to Thoroughbreds exit completing the boundary.

Starfire Limited Entry Area: begins at the intersection of Route 1098 and Route 80 near Softshell, Kentucky. The boundary proceeds west along Route 1098 to the junction of Route 1098 and Route 15. The boundary then proceeds south along Route 15 to the junction of Route 15 and Route 80 at the town of Hazard, Kentucky. The boundary proceeds east along Route 80 and intersects Route 1098 at Softshell, Kentucky completing the boundary.

(6) Tags shall be distributed as follows:
(a) Two (2)-antlered commission tags to be used at the Starfire Limited Entry Area;
(b) Six (6)-antlered tags to be used at the Starfire Limited Entry Area;
(c) Six (6)-antlerless tags to be used at the Begley/Redbird Limited Entry Area;
(d) Six (6)-antlered tags to be used at the Starfire/Begley/Redbird Limited Entry Area;
(e) Six (6)-antlerless tags to be used at the Begley/Redbird Limited Entry Area;
(f) Six (6)-antlered tags to be used in the elk zone outside of the limited entry areas; and
(g) Nine (9)-antlerless tags to be used in the elk zone outside of the limited entry areas.

Section 5. Seasons for Annual Quota Elk Hunts. (1) There shall be two (2) one (1) week [three (3)] annual elk quota hunts.
(a) There shall be a quota hunt beginning the first Saturday in October, for seven (7) consecutive days for antlered elk on the Starfire and Begley/Redbird Limited Entry Areas and in the zone-at-large.
(b) There shall be a quota hunt beginning the first Saturday in December, for seven (7) consecutive days for antlerless elk on the Starfire and Begley/Redbird Limited Entry Areas and in the zone-at-large.
(c) An either-sex archery season for zone-at-large permit holders shall be held from [The season for zone-wide quota elk permits shall be] the first Saturday in October through the third Monday in January.
(2) Legal weapons. All hunters may use any legal weapon for deer hunting except as provided by subsection (4) of this section.
(a) Zone-wide hunters may use weapons legal for deer hunting, the day they are hunting, except as provided by subsection (5) of this section; and
(b) Limited-entry-area hunters may use any legal weapon for deer hunting except as provided by subsection (5) of this section.
(3) Limits.
(a) A quota elk hunter shall only take one (1) elk of the sex determined by the tag drawn.
(b) An individual who receives or is transferred an either-sex landowner cooperators permit or a special commission permit may hunt in either the bull only or antlerless only quota hunts, providing the tag has not been filled but is held to the season bag limit.
(4) Illegal hunting equipment. A person shall not use or possess while elk hunting:
(a) A device capable of taking an elk except a firearm, crossbow or archery equipment;
(b) A modern firearm of less than .27 caliber;
(c) A muzzle-loading firearm of less than .50 caliber;
(d) A shotgun of less than 20 gauge;
(e) A handgun;
(f) Rimfire ammunition;
(g) A fully-automatic firearm;
(h) A firearm with a magazine capacity greater than ten (10) rounds;
(i) Steel jacketed ammunition;
(j) Tracer bullet ammunition;
(k) A shotgun shell containing more than one (1) projectile;
(l) A broadhead smaller than seven-eighths (7/8) inch wide;
(m) A barbed broadhead;
(n) A crossbow without a working safety device;
(o) A chemically-treated arrow; or
(p) An arrow with a chemical attachment;
(5) Hunter orange.
(a) During the firearm elk season, all hunters hunting within the sixteen (16) county elk restoration zone [elk quota hunts, elk hunters or any person accompanying an elk hunter] shall display solid, unbroken hunter orange visible from all sides on the head, back and chest pursuant to 301 KAR 2:172, Section 4, and 301 KAR 2:178, Section 3(7).
(b) The hunter orange portions of a garment worn to fulfill the requirements of this section:
1. May display a small section of another color; and
2. Shall not have mesh weave openings exceeding one-fourth (1/4) inch.
(c) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.
(6) Hunter requirements.
(a) A person under sixteen (16) years old shall be accompanied by an adult who shall remain in a position to take immediate control of the juvenile's firearm.
(b) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or elk permit if the adult is not hunting.
(c) An elk hunter or any person accompanying the elk hunter:
1. May be in the field, woods or stands before or after daylight hours, but shall not take elk except during daylight hours;
2. Shall not use dogs;
3. Shall not use bait;
4. Shall not drive elk from outside his assigned area;
5. Shall not take swimming elk;
6. Shall not use electronic calls; and
7. Shall not take an elk while in a vehicle or boat, or on horseback. A hunter may use a vehicle as a hunting platform if he has a disabled hunting exemption permit issued by the department.
(7) Tagging and check-in requirements.
(a) Immediately after taking an elk, a hunter shall attach the tag portion of the permit to the carcass before moving the carcass.
(b) Prior to hunting, the limited entry area hunters shall check in at the following locations:
1. Starfire Limited Entry Area - Robinson Forest;
2. Begley Limited Entry Area - Blanton Forest Boy Scout Camp.
(c) A person checking in for a limited entry area quota hunt shall show his Social Security number, and valid hunting license, except a person on military furlough for more than three (3) days may show his military identification instead of a license.
(8) After harvest, limited entry area hunters shall check out at the locations listed in subparagraphs 1 and 2 of this paragraph.
(e) After harvest, zone-at-large [wide] hunters shall telecheck their elk by calling 1-800-245-4263 and record the confirmation number on a hunter's log:
1. Shall notify the department by calling 1-800-26-ALERT to have the elk inspected;
2. Shall not move the elk from the site until the department has completed the inspection.
3. May field dress the elk prior to inspection by the department, if the carcass and entrails are retained at the site until inspection is complete; and
4. Are not required to telecheck their harvest.

Section 6. Elk Hunting on Public Land. (1) An individual who has been drawn to hunt in the elk hunt, or who either receives or is transferred a special commission permit, may hunt on all Wildlife Management Areas, state forests, Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson Nation Forest within the sixteen (16) county elk zone under the conditions of the type of tag they receive.
(2) Public land that lies within a Limited Entry Area shall be managed pursuant to Sections 4 and 5 of this administrative regulation tinder the requirements of Limited Entry Areas regulations.
VOLUME 31, NUMBER 11 – May 1, 2005

(3) Public land that lies within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation [under the requirements of the zone-at-large regulations].

(4) Portions of Paintsville Lake WMA lie outside the sixteen (16) county elk restoration zone and are subject to the requirements established in Section 8 of this administrative regulation (out-of-zone elk regulations).

(5) Elk hunting is not allowed on public areas during quota deer hunts.

(6) Hunter orange requirements shall be in effect.

Section 7. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue one (1) either-sex elk permit per year to qualified landowners who enter into a five (5) year public hunting and access agreement with the department.

(2) To qualify, landowners shall own 5,000 acres of contiguous elk habitat to which he or she agrees to allow public hunting and access.

(3) Landowner cooperator permits are transferable, but shall be used on the landowner cooperator's land for which the agreement was made.

(4) One (1) landowner cooperator permit shall be issued for each 5,000-acre of contiguous land.

(5) Public access agreements with the department shall be memorialized in memorandums of understanding.

(6) Recipients of landowner cooperator permits shall comply with the provisions of this administrative regulation regarding including seasons, legal methods of take and other elk hunting requirements.

(a) Landowner cooperator land that resides within a limited entry area shall be managed pursuant to Sections 4 and 5 of this [under the requirements of limited-entry areas] administrative regulation.

(b) Landowner cooperator land that resides within the zone-at-large shall be managed pursuant to Sections 4 and 5 of this administrative regulation [under the requirements of the zone-at-large administrative regulations].

Section 8. Hunting Elk Outside of the Sixteen (16) County Restoration Zone. (1)(a) A person may hunt elk in counties other than the sixteen (16) county restoration zone.

(b) The restoration zone counties are:

1. Bell;
2. Breathitt;
3. Clay;
4. Floyd;
5. Harlan;
6. Johnson;
7. Knott;
8. Knox;
9. Leslie;
10. Letcher;
11. Magoffin;
12. Martin;
13. McCracken;
14. Perry;
15. Pike; and

(2) The methods of taking and seasons established in 301 KAR 2:172 and 301 KAR 2:174 shall apply to taking elk outside of the sixteen (16) county restoration zone.

(a) In order to harvest an out-of-zone elk, a hunter must be a legal deer hunter and have purchased a ten (10) dollar elk-drawing permit.

(b) Landowners are exempt from this permit requirement as per KRS 150.170.

(3) Either sex elk may be taken and shall not count towards the deer bag limit.

(4) There shall be a bag limit of one (1) out-of-zone elk per hunter [no-bag limit for elk taken].

(5) Immediately after taking an elk, the hunter shall:

(a) Notify the department by calling 1-800-25-ALERT to have the elk inspected; and

(b) Not move the elk from the site until the department has completed the inspection.

(6) A hunter may field dress an elk on site prior to inspection by the department, if the carcass and entrails are retained at the site until inspection is complete.

(7) An elk harvested in a county other than the sixteen (16) county restoration area does not have to be telechecked.

(8) A person shall report the pickup of any elk antler that has the skull or skull plate attached to it, not including sheds. A person shall call the Department Law Enforcement at 1-800-ALERT within twenty-four (24) hours.

C. THOMAS BENNETT, Commissioner
W. JAMES HOST, Secretary
APPROVED BY AGENCY: February 11, 2005
FILED WITH LRC: February 11, 2005 at 3 p.m.
CONTACT PERSON: Dan Figert, Assistant Director, Wildlife Division, 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.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities

(As Amended at ARRS, April 12, 2005)


RELATES TO: KRS 67A.028, 67B.020(1), 441.045, 441.055, Ky. Const. Sec. 99, 152
STATUTORY AUTHORITY KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [which] elect to house state prisoners. This administrative regulation establishes definitions for 501 KAR Chapter 3, regulating full-service jail facilities.

Section 1. Definitions. (1) "Ceiling" means the overhead area in the multipurpose room which is below the secure deck.

(2) "Dayroom" means a secure area with controlled access from the inmate living area, to which inmates may be admitted for daytime activities including dining, bathing, and selected recreation or exercise.

(3) "Deck" means the secure overhead area of the jail, which is part of the security perimeter.

(4) "Department" is defined in KRS 441.005(5).

(5) "Detoxification area" means an area used to hold one (1) or more chemically impaired persons temporarily during the detoxification process until they can care for themselves.

(6) "Direct supervision area" means an area used to house seventy (70) or fewer prisoners in which inmates-in-which a corrections officer is always present and directly supervising the prisoners [inmates]. [Inmates housed in direct supervision areas shall be classified objectively based on their risk and needs and their classification indicates their ability to function in this type setting.]

(7) [66] "Dormitory" means:

(a) An area equipped for housing not less than three (3) or more than thirty-six (36) persons; or

(b) If in a directly supervised area, an area equipped for housing not more than seventy (70) persons.

(8) [79] "Holding area" means an area used to hold one (1) or more persons temporarily while awaiting processing, booking, court appearance, or discharge, or until they can be moved to a general housing area.

(9) [68] "Jail" is defined in KRS 441.005(1).

(10) [69] "Jail personnel" is defined in KRS 441.005(6).

(11) [40] "Jailer" means:

(a) The official duly elected or appointed pursuant to Section 99 or 152 of the Kentucky Constitution, charged with the responsibility of administering the jail;

(b) A department as defined in KRS 67B.020(1); or
(c) A correctional services division as created by KRS 67A.028.

(12) [(11)] "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners [inmates] in the jail's custody [jail].

(13) [(12)] "Pat or frisk" means a manual search of a clothed person and includes a visual inspection of the open mouth.

(14) [(13)] "Penal type" means furnishings, fixtures, and equipment approved by the department.

(15) [(14)] "Prisoner" is defined in KRS 441.005(3).

(16) [(15)] "Prisoner living area" means a group of rooms or cells that provide housing for the prisoner population.

(17) [(16)] "Probing of body cavities" means a manual or instrument search of a person's oral, anal, vaginal, or other body cavity, performed by medical personnel.

(18) [(17)] "Safety vestibule" means a defined space that promotes security by the use of two (2) or more doors used to contain and observe those who pass.

(19) [(18)] "Sally port" means a vehicular drive-in, which shall be located in close proximity to the jail intake area.

(20) [(19)] "Security area" means a defined space whose physical boundaries have controlled ingress and egress.

(21) "Security personnel" means full-time and part-time personnel operating within a security area.

(22) [(20)] "Strip search" means a body search during which a person is required to open or remove clothing, during which a person is subject to visual inspection of the torso, female breast, genital area, anal area, and [as well as] other body cavities.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner

APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 3:020. Administration; management.

RELATES TO: KRS 69.210, 202A.091, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails which elect to house state prisoners. This administrative regulation sets forth procedures to be followed by jails which elect to house state prisoners for the administration and management of those jails.

Section 1. Policy and Procedure - Organization. (1) The jailer for a jail which elects to house state prisoners shall develop and maintain an organizational chart and an operations manual of policy and procedure that [which] has been adopted by the fiscal court and filed with the Department of Corrections.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include but not be limited to the following aspects of the jail's operation:

(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and management.
(f) Medical services.
(g) Food services.

(h) Emergency and safety procedures.

(i) Classification.
(j) Prisoner programs.
(k) Prisoner services.
(l) Admission and release.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Department of Corrections.

Section 2. Legal Assistance. (1) The jailer for a jail which elects to house state prisoners shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing if legal representation or legal advice to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall provide funds for adequate legal representation for the jailer if the jailer has acted within his official capacity and is involved in civil or criminal litigation as a result. The fiscal court shall be encouraged to carry liability insurance for the jail staff and other county officials.

Section 3. Public Information. (1) The jailer for a jail that [which] elects to house state prisoners shall develop and implement a procedure for the dissemination of information about the jail to the public, to government agencies, and to the media. The public and prisoner shall have access to the procedures.

(2) With the consent of the prisoner, news media shall be permitted to interview any prisoner as set forth in the jail's policy and procedure manual except if the safety and security of the jail is affected.

(3) Written policy and procedure shall set forth the time and length allowable for prisoner interviews.

(4) All official statements to the news media, relating to jail administration policy, shall be made by the jailer only or his designee.

(5) Release of prisoner information shall include the following:

(a) All requests for information shall be addressed to the jailer;
(b) Governmental agencies shall be provided with information pertinent only to their specific function [and with the consent of the prisoner]; and
(c) Private citizens shall only be provided with information supplied to the media.

(6) Information shall not be released that is detrimental to another prisoner.

Section 4. Information Systems. The jailer for a jail that [which] elects to house state prisoners shall establish and maintain an information system that [which] shall comply with the requirements of this section.

(1) Jail information and prisoner records shall be retained in written form or within computer records.

(2) Jail information and prisoner records shall be stored in a secure manner so that they are protected from theft, loss, tampering, and destruction. Written guidelines shall specify the length of time a prisoner record shall be maintained after a prisoner's release from custody and the conditions [by (and)] which archives are maintained.

(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the jail record. Extraordinary or unusual occurrences shall include but not be limited to:

(a) Death of a prisoner.
(b) Attempted suicide that constitutes a serious health situation or suicide.
(c) Serious injury, whether accidental or self-inflicted.
(d) Attempted escape or escape from confinement.
(e) Fire.
(f) Riot.
Section 5, Prisoner Records. (1) The information required by 501 KAR 3:120 and 3:130 for admission and release shall be retained for each prisoner. Other information retained in each prisoner's record shall include but not be limited to:
(a) Court orders.
(b) Personal property receipts.
(c) Infraction reports.
(d) Reports of disciplinary actions.
(e) Work record and program involvement.
(f) Unusual occurrences and if death of a prisoner, disposition of the prisoner's property and remains.
(2) Medical records shall be maintained as required by 501 KAR 3:090.
(3) The jailer for a jail which elects to house state prisoners shall ensure that prisoner records are safeguarded in accordance with relevant federal and state laws and regulations.
(4) The jailer shall require that prisoners sign a "Release of Information Consent Form" prior to the release of information, other than public information, to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the prisoner's record. This form shall include but not be limited to:
(a) Name of person, agency or organization requesting information.
(b) Name of facility releasing information.
(c) Specific information to be disclosed.
(d) Purpose of the information.
(e) Date consent form is signed.
(f) Signature of prisoner.
(g) Signature of employee witnessing the prisoner's signature.
(5) All jail records maintained on mental inquest detainees held under KRS Chapter 202A shall be kept separate from any other jail records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expulsion pursuant to KRS 202A.091(2), the jailer for a jail which elects to house state prisoners shall seal the records and the mental inquest detainee's stay at the jail shall be deemed never to have occurred.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.
9. Bring a weapon or an item declared as contraband into the jail without proper authorization;
10. Engage in critical discussion of staff or a prisoner in the
presence of another prisoner;
11. Divulge confidential information without proper authorization;
12. Withhold information which threatens the security of the jail, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or
another;
14. Engage in a business or profitable enterprise with a pris-
oner; or
15. Inquire about, disclose, or discuss details of a prisoner's
crime other than as may be absolutely necessary in performing
official duties.
(b) An employee shall:
1. Comply with established rules, administrative regulations,
and lawful orders from a superior;
2. Treat each prisoner in a fair, impartial manner; and
3. Report a violation of the code of ethics to the jailer.
(3) A violation of the code of ethics shall be made a part of the
employee’s personnel file.

This is to certify that the Jail Standards Commission has ap-
proved this administrative regulation prior to its filing by the De-
partment of Corrections with the Legislative Research Com-
mission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
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Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-5494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)


RELATES TO: KRS 441.045, 441.055, 441.064, 441.075
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055
requires the Department of Corrections to promulgate adminis-
trative regulations establishing minimum standards for jails which
elect to house state prisoners. This administrative regulation es-

tablishes standards and procedures to be followed in the design
and construction of full-service jails.

Section 1. Consultation. The department shall provide to a

county government seeking to remodel an existing jail or construct

a new jail, a consultant knowledgeable in the design, utilization,

and operation of jails. The consultant shall meet with the appropri-

ate officials of that county and advise them concerning:
(1) Site selection;
(2) Probable need as it relates to capacity and types of prisoner-
           s to be housed;
(3) Sources of financing for constructing;
(4) Laws and administrative regulations relating to treatment of
           prisoners;
(5) Laws and administrative regulations relating to facilities for
           prisoners;
(6) Sources of revenue for operations of the jail;
(7) Probable cost for operation of the jail; and
(8) Potential for sharing facilities with adjoining counties.

Section 2. Site Acceptance. A jail shall not be built without site
acceptance by the department. The following criteria shall be con-
sidered in site selection:
(1) Size;
(2) Proximity to court;

(3) Proximity to community resources;
(4) Availability of public transportation;
(5) Environmental health;
(6) Adequate parking; and
(7) Provisions for future expansion.

Section 3. Construction Documents. Prior to the renovation or
construction of any jail, plans and specifications shall be submitted
to the department for review and approval. Plans and specifi-
cations for jail renovation or construction shall contain the following
criteria and documentation:
(1) For major renovation or new construction or information
review purposes, a programming phase, to include:
   (a) Evaluation of existing facility;
   (b) Population analysis as based on the NIC staffing analysis,
       and may include, jail's operators, jail programs, court location, and
       transportation issues;
   (c) Space requirements based on population analysis and
       standards for the facility and site outlined in this administrative
       regulation;
   (d) Staffing analysis;
   (e) Cost analysis to include construction and operation costs;
   (f) Financing alternatives, if applicable;
   (g) Design-construction time schedule; and
   (h) Summary and recommendations.
   (2) A schematic phase containing:
      (a) A scale drawing of each floor plan with proposed rooms
          and areas one-eighth (1/8) inch minimum;
      (b) A scale drawing of the site, locating the building, parking
          and other facilities one (1) inch equals fifty (50) feet;
      (c) Documentation of site as to:
          1. Size;
          2. Proximity to court;
          3. Proximity to community resources;
          4. Availability of public transportation;
          5. Environmental health;
          6. Adequate parking; and
      (d) Sections through the proposed structure indicating deck
          [ceiling] heights of rooms, mechanical spaces, roof slopes and
          other related information;
      (e) Scale elevation drawing of exterior walls;
      (f) Schematic cost estimate to include revised construction and
          operation costs; and
      (g) A revised design-construction time schedule.
   (3) A design development phase containing:
      (a) A scale drawing on each floor plan with proposed rooms
          and areas with their dimensions one-eighth (1/8) inch minimum;
      (b) All necessary construction drawings including construction
details;
      (c) Specifications for materials and workmanship;
      (d) A proposed contract with general and special conditions;
      (e) Engineering calculations for the foundations, structure,
          heating, ventilating, air conditioning, lighting and plumbing; and
      (f) Detailed estimates of cost of land, site development, con-
          struction, financing, professional services, equipment and furnish-
          ings.
      (4) Construction document phase containing:
         (a) Revised design development construction drawings follow-
             ing review by all applicable agencies, signed by an architect regis-
             tered in the Commonwealth of Kentucky and revised if necessary
to include changes required by the department; and
         (b) Revised design development specifications of material and
             workmanship following review by all applicable agencies.
      (5) A contract administration phase containing:
         (a) Signed copies of the contracts for construction, financing
             and bonding;
         (b) Signed copies of the construction permits; and
         (c) Documentation of required review by other applicable state
             agencies.
      (d) Every change order shall be submitted to the department
          for review and approval.

Section 4. Approval of Renovation, Construction Plans and
Specifications. (1) Construction shall not begin until the construction document phase has been approved. The department shall:
(a) Review each submission within thirty (30) days of receipt; and
(b) Issue a letter of:
   1. Approval;
   2. Acceptance with required changes; or
   3. Rejection, with reasons stated.
(2) Depending on the site of the proposed constructions, renovation or addition, the department may combine two (2) or more phases, as outlined in Section 3 of this administrative regulation, for review and approval.
(3) A change to the plan shall require redrawing unless specifically exempted by the department. Specifications shall be rewritten to reflect a change.

Section 5. Waiver of Compliance. (1) The department may grant a waiver of the implementation of the physical plant standards for an existing jail if the department determines:
(a) That strict compliance shall cause unreasonable difficulties;
(b) That a waiver shall not seriously affect the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail; and
(c) That compliance shall be achieved in a manner other than that specified, but in a manner which is sufficient to meet the intent of this administrative regulation.
(2) If [When] a waiver from a standard is desired, the responsible local authority shall submit a written request to the department. The written request shall include the following information:
(a) Citation of the specific standard involved;
(b) Identification and description of the specific difficulties involved in meeting strict compliance;
(c) Description of the alternative proposed; and
(d) Provision of sufficient documentation which shall demonstrate that the waiver, if granted, shall not jeopardize the security, supervision of prisoners, programs, or the safe, healthful, or efficient operation of the jail.
(3) A waiver, if granted by the department, shall apply only to the petitioner for the specific situation cited and for the period of time specified and shall include any requirements imposed by the department as conditions upon the waiver. A waiver shall not be granted for longer than twelve (12) months. A waiver granted for a twelve (12) month period shall be reviewed for reapproval at the end of the period.

Section 6. Facility Design. Depending upon its size and intended use, each jail shall include within its walls the following facilities and equipment:
(1) Entrances. Each jail shall have three (3) separate and distinct entrances: a public entrance, a prisoner entrance and a service entrance. The department may permit these entrances to be combined.
   (a) Public entrance. The purpose of this entrance shall be to divert the general public from the security area of the jail and from contact with incoming prisoners. This area shall be the location for the general public to conduct their business at the jail. The following design features shall be incorporated:
      1. Provide a clear view of this from the control room by means of direct surveillance or closed circuit TV.
      2. Meet the requirements for handicapped persons.
   (b) Service entrance. The purpose of this entrance shall be to provide access to service vehicles and delivery trucks with minimum security risks. It shall be located in close proximity to storage rooms and the kitchen area.
   (c) Prisoner entrance. The purpose of this entrance shall be to provide secure and controlled access to the jail for prisoners. The entrance shall be serviced by a drive-in sally port made secure by electronically or manually operated doors for entrance and exit, or a secure walk-in vestibule and shall incorporate the following design features:
      1. Be located adjacent to the booking area.
      2. Be monitored from the control room.
      3. Be free of steps or other obstacles.
      4. Be protected from inclement weather.

5. Have a security pen-tile pistol locker in the sally port or vestibule.
6. Hardware and equipment shall be of approved pen-tile type.
(d) If [When] the vestibule is used for outside entrance, at least the outer entry door shall be remotely operated.
(2) Exits. An opening in the security perimeter shall be secured with a penal device. Fire exits, [if [when] possible, shall open into controlled, secured courts or [and] exercise areas.
(3) Administrative areas. Administrative areas shall provide space outside the secured area of the jail for the housing of administrative offices and to accommodate the public. Administrative areas shall contain the following additional areas:
(a) A visiting area which shall provide:
   1. Space for the general public;
   2. Protection from inclement weather; and
   3. If the facility is a new jail, toilet facilities and drinking fountains;
(b) A visiting area, public side which shall:
   1. Provide for private communication with prisoners; and
   2. Be located in close proximity to the waiting area;
   (c) An office area which shall be of sufficient space to house the administrative function of the jail; and
   (d) An entrance to the security area which shall:
      1. Provide secure access to the security area;
      2. Be of pen-tile type, and
      3. Have access controlled from the security area.
(4) Security area. The area shall enclose those facilities and services required for or used by prisoners. It shall contain a booking area. The purpose shall be to provide a private and separate area, properly equipped to carry out admission and release procedures. The equipment shall be pen-tile type. This area shall be designed for different classes of prisoners. Design features for this area shall include:
(a) Close proximity to a secure area for storage of prisoner personal property.
(b) Close proximity to an area for photography and fingerprinting.
(c) Close proximity to an area for showering, delousing, and strip searching a prisoner which assures privacy for the prisoner.
(d) Close proximity to temporary holding and detoxification cells.
(e) Located in a manner to be monitored by a control room.
(f) Detoxication area. The purpose shall be to provide an area for the separate intoxicated prisoners from the general prisoner population. Design features shall include:
   (a) A minimum of fifty (50) square feet per prisoner.
   (b) A minimum of eight (8) feet of deck [ceiling] height.
   (c) One (1) bunk of approved material thirty (30) inches wide by seventy-two (72) inches long by four (4) inches high for each prisoner.
   (d) A penal commode, lavatory and a flush floor drain controlled from outside the cell.
   (e) A bubble-type drinking fountain.
   (f) These fixtures and equipment shall be pen-tile type.
   (g) Each wall shall be of approved masonry, concrete or steel construction.
   (h) Each horizontal surface of the walls shall be sloped [one-fourth (1/4) of an inch for the floor drain.
   (i) The protruding corners (except at deck [ceiling]) shall be covered.
   (j) Deck [Ceiling], walls, surfaces of the wall base and floors shall be of approved masonry, concrete or steel construction.
   (k) Each detox cell shall have sufficient pen-tile type fixtures capable of providing twenty (20) foot-candles of light with a night-light capable of providing five (5) foot-candles of light.
(6) Holding areas. The purpose of holding areas shall be for temporary detention not to exceed four (4) hours in secure holding or eight (8) hours in diversion holding.
(a) Design features for secure holding shall include:
   1. Twenty-five (25) square feet per rated capacity; minimum size of the area shall be fifty (50) square feet.
   2. Eight (8) feet of deck [ceiling] height.
   3. One (1) penal-type bench per rated capacity.
   4. The equipment shall be pen-tile type.
5. One (1) penal-type lavatory and commode.
6. One (1) penal-type light fixture capable of providing twenty (20) foot-candles of light.
7. Decks [Ceilings], walls, surfaces of wall bases and floors shall be of approved masonry, concrete or steel construction.
(b) If a diversion holding area is provided, features and requirements shall include:
1. Twenty-five (25) square feet per rated capacity; minimum size of area shall be fifty (50) square feet;
2. Total rated capacity not to exceed twenty-four (24) persons;
3. One (1) bathroom for a rated capacity of eight (8) or less; two (2) bathrooms for a rated capacity of nine (9) or more;
4. At least one (1) water fountain shall be located in the area;
5. A phone system shall be available for use by prisoners;
6. Construction shall be fire-rated with penal hardware, windows and doors;
7. Furnishings shall not include beds but chairs and tables per rated capacity and shall be fire-rated;
8. An unobstructed view into the area shall be provided;
9. Areas shall have constant in-person surveillance;
10. If prisoners are housed in the area during normal meal times, they shall be fed. Meals shall be either hot or cold; and
11. Policy and procedure shall set forth criteria for placement of prisoners in this area.
(7) Medical exam room. The purpose of this room shall be to provide a separate and secure area for medical examinations and rendering medical treatment. Design features shall include:
(a) Minimum dimension shall be eight (8) feet.
(b) Minimum deck [ceiling] height shall be eight (8) feet.
(c) One (1) lavatory or counter sink.
(d) One (1) work counter.
(e) Secured lockers for medical equipment, medical instruments, medications, bandages, etc., secured to the floor or walls or a secure closet.
(f) One (1) or more medical examination tables.
(g) Electrical power outlets shall be provided in this room.
(h) All decks [ceilings], walls, and floors shall be approved masonry, concrete or steel construction.
(i) If medical services are provided outside the jail, the jail shall have a secure area for storage of medication and medical equipment.
(8) Visiting area, prisoner side. The purpose shall be to provide secure and private visitation for the prisoners. The equipment and furnishings shall be of penal-type and permanently attached.
(9) Conference area. The purpose of this area shall be to provide space for confidential conferences between prisoners and lawyers, counselors, clergy, etc. Design features shall include:
(a) Doors, windows, and light fixtures shall be penal-type.
(b) Walls, floor, and deck [ceiling] shall be of approved masonry, concrete or steel construction.
(c) Furnishings shall be noncombustible and nontoxic as approved by the department.
(10) Multipurpose room. The purpose of this area shall be to provide space for assembly of prisoners for specific program activities. This area shall allow at least twenty-five (25) square feet per prisoner in an area with a minimum of 250 square feet. Design features shall include:
(a) Doors, windows, and light fixtures shall be penal-type.
(b) Walls, floor, and deck shall be of approved masonry, concrete or steel construction.
(c) Furnishings shall be noncombustible and nontoxic as approved by the department.
(d) Deck [ceiling] shall be of approved construction.
(11) Outdoor recreation. The purpose of this area shall be to provide secure outdoor space for recreational activities. This area shall allow at least thirty-five (35) square feet per prisoner in an area with a minimum of 350 square feet.
(12) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:
(a) Compliance with standards for the Retail Food Code, 902 KAR 45:005.
(b) Commercial-type stoves and refrigeration units.
(c) Doors and windows shall be penal-type.
(d) Walls, floors, and decks [ceilings] shall be approved fire-rated masonry, concrete or steel construction.
(13) Control room. The purpose of this area shall be to control all movement of prisoners within the jail and traffic in and out of the security area. Also, this area shall be the hub for operations within the jail. Design features shall include:
(a) Doors and windows shall be of penal-type.
(b) Walls, floors, and deck [ceiling] shall be approved masonry, concrete or steel construction.
(c) Audio and video monitors shall be located in this area.
(d) Gauges, indicators, and alarms shall be located in this area.
(e) Central control panels shall be located in this area.
(f) This area shall permit visual observation of all corridors, entrances, and exits under its supervision.
(14) When jail staff is [are] not within normal hearing distance of prisoners, an audio communication system shall be installed to allow staff to communicate with prisoners.
(15) A panic button, staff call station or portable communication device shall be installed or available in corridors and staff observation areas, which shall sound an alarm in the control center in the event of an emergency situation.
(16) Confinement areas. The purpose of these areas shall be to provide suitable living conditions for all types of prisoners lodged in the jail. Design features for all living areas shall include:
1. Providing sufficient natural or artificial light to provide twenty (20) foot-candles with a nightlight capable of providing five (5) foot-candles of light.
2. Providing ventilation to meet air exchange as required in the Kentucky Building Code, 815 KAR 7:120 [196].
4. Shall be of approved masonry, concrete or steel construction.
5. All furnishings and equipment shall be penal-type and permanently attached.
6. Each confinement area shall have floor drains to service each living area.
7. Be equipped with an approved securable food pass.
8. Electrical outlets if [when] provided shall be ground-faulted or have ground-fault circuit breakers. Receptacle and switch plate covers shall be penal-type.
(b) All cells and housing areas design features shall include:
1. Prisoner living areas shall be equipped with the security hardware to meet the security requirements of the prisoners housed in the area. Depending on the size of the jail, at least one (1) living area shall be designed at high security and be equipped with a safety vestibule to enter the living area.
2. Depending on the size of the jail, one (1) or more isolation single-man cells shall be provided.
3. All cells shall open into a dayroom and a cell shall not be less than seventy (70) square feet. A cell shall not have more than two (2) penal-type bunks. If [When] two (2) persons are housed in a cell, they shall not be detained in the cells for longer periods than twelve (12) hours, except in emergency situations.
4. If [When] the vestibule is used at a cell area, at least the inner door shall be remotely operated. Each cell shall contain:
   a. A penal-type commode, lavatory and drinking fountain, penal-type bunks secured to the floor or wall, penal-type table with two (2) seats, and penal-type storage area for personal property.
   b. A penal-type light fixture with controls nonaccessible to prisoners unless it has staff override.
5. The jail shall provide living space for low security prisoners including work release and community service workers. This area shall be either cells opening into a dayroom or a combination of this and multiple-occupancy dorms. If dorms are used, they shall include:
   a. Forty (40) [Fifty-(50)] feet per prisoner.
   b. One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) [eight-(8)] prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes
shall not be reduced to less than one-half (1/2) the number required.
  c. One (1) shower per twenty (20) [sixteen (16)] prisoners.
  d. Sufficient tables and benches to handle the number of prisoners housed in the dorm.
  e. One (1) pen-type storage area for personal property per prisoner.
  f. One (1) pen-type bunk [secured-to-the-floor-or-wall] per prisoner.
  g. Each dayroom area shall contain:
     a. Thirty-five (35) square feet per prisoner.
     b. One (1) commode per eight (8) prisoners. One (1) urinal may be substituted for each commode in male areas but the commodes shall not be reduced to less than one-half (1/2) the number required.
  h. One (1) lavatory per eight (8) prisoners.
  i. One (1) drinking fountain per twenty (20) [sixteen (16)] prisoners.

  j. One (1) shower per twenty (20) [sixteen (16)] prisoners.
  k. Tables and benches per rated capacity with space twenty-four (24) inches wide and twelve (12) inches deep per prisoner.

  1. Direct supervision areas. The purpose of a direct supervision area shall be to provide suitable living conditions for prisoners who are located in the jail whose behavior indicates their ability to function in a less secure setting under the direct supervision of jail staff. Jails that elect to use the direct supervision concept shall have a sufficient number of secure cell or dormitories, as approved by the Department of Corrections, in order to separate prisoners who display negative behavior in direct supervision areas. All direct supervision areas shall have a secure perimeter. Direct supervision area design features shall include:
     a. Sufficient natural or artificial light to provide twenty (20) foot-candles with a nighttime capable of providing five (5) foot-candles of light.
     b. Ventilation to meet air exchange as required in the Kentucky Building Code, KAR 7-120 [406].
     c. Temperature ranges within comfort zones (sixty-five (65) degrees Fahrenheit to eighty-five (85) degrees Fahrenheit).
     d. Approved masonry or concrete construction shall be used.
     e. All furnishings and equipment shall be penal-type or commercial type.
     f. Electrical outlets shall be ground-faulted or have ground-fault circuit breakers.
     g. Dormitories shall not be less than forty (40) square feet per person or exceed more than seventy (70) persons.

  h. One (1) commode, one (1) lavatory, and one (1) drinking fountain per ten (10) prisoners. One (1) urinal may be substituted for each commode in male areas. The commodes shall not be reduced to less than one-half (1/2) the number required.
  i. One (1) shower per twenty (20) prisoners.
  j. Sufficient tables and chairs to handle the number of prisoners in the dorm.
  k. One (1) storage area for personal property per prisoner.
  l. A phone system shall be available for use by prisoners.
  m. All other full-service requirements as outlined in 501 KAR Chapter 3 (the Kentucky Administrative Regulations (KAR) for jails) shall apply to direct supervision areas.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.220(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005, at noon
CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.
(a) The weapons storage area shall be inaccessible to unauthorized persons.
(b) There shall be a written procedure for issuing and accounting for all weapons.
(c) Security devices and safety equipment shall be inspected monthly to ensure they are maintained in proper working order.
(d) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area located outside the security perimeter of the confinement area.
(e) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of jail personnel.
(f) A prisoner.
(g) A prisoner may be assigned the responsibility of providing prisoner services, including providing meals under the direct supervision of staff;
(h) Shall not be assigned to a position of authority over another prisoner.
(i) A prisoner shall not be permitted to perform or assist in a security duty.
(j) A jail with a work release or community service program shall establish special control procedures to minimize contact between a prisoner with work release privileges and another prisoner.
(k) A prisoner shall be searched, in accordance with the guidelines established in 501 KAR 3:120, when entering or leaving the security perimeter.
(l) Written procedures shall be developed for transporting outside the jail.
(m) Each jailer shall develop written policies and procedures governing the use of physical restraints.
(n) A prisoner placed in physical restraints shall be constantly monitored.
(o) The jail shall have key-control procedures which shall include:
(p) A key control center which is secure and inaccessible to an unauthorized person at all times.
(q) An accounting procedure for issuing and returning keys.
(r) A procedure for immediate securing and repairing a broken or malfunctioning key or lock.
(s) A set of duplicate keys to be maintained in a separate, secure place.
(t) A prisoner shall not be permitted to handle a key used to operate a jail security lock.
(u) A key operating a lock to an outside door or gate shall not be permitted in the confinement area.
(v) An emergency key or any key to a critical security area shall be issued in accordance with written procedures established by the jailer.
(w) Precautions similar to those outlined above shall be taken to ensure the security of any operated locking devices including electrical switches or levers.
(x) A lock to an outside exit shall be keyed differently from an interior lock. The lock to the control room shall be keyed differently from all other locks.
(y) Trustees.
(z) A trustee shall not have access to, or control of, a weapon.
{A} An unsupervised trustee shall not be permitted in either a program, support, or housing area with a prisoner of the opposite sex.
(a) A trustee shall not be permitted in either a program, support, or housing area with a juvenile inmate.
Section 4. Daily Jail Log; Special Reports. A daily jail log shall be kept current and shall reflect significant occurrences within the jail. Special reports shall include:
(1) Use of force.
(2) Disciplinary action.
(3) Medical or mental health treatment.
(4) Feeding schedule and menus.
(5) Extraordinary occurrences.
(a) Fire.
(b) Assault.
(c) Suicide or attempted suicide.
(d) Escape or attempted escape.
(e) Inmate vandalism.
(a) Destruction of jail property.
(b) Flooding of plumbing fixtures.
(c) Staff roster for each shift.
(d) Telephone log of initial phone call.
(e) Visitor's log.
This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(5) and 13A.220(6)(a).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 3:070. Safety; emergency procedures.
RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [which] elect to house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in local full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written policy and procedure which shall specify fire prevention administrative regulations and practices to ensure the safety of prisoners, visitors, and staff. The policy shall include:
(a) Provision for a fire emergency planning session for staff at least quarterly.
(b) Written documentation of the fire planning session.
(c) A fire safety inspection by the department at least once a year.
(d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by staff monthly.
(e) Smoking restrictions and regulations.
(f) An evacuation plan coordinated with local fire officials. This plan shall be approved by the Department of Corrections.
(2) Each jail shall have written policy and procedures for emergency situations including:
(a) Escape;
(b) Hostage taking;
(c) Riot;
(d) Food poisoning;
(e) Civil disturbance in the community;
(f) Natural disaster;
(g) Suicide; and
(h) Other death and disorder.

Section 2. Physical Plant. (1) Each jail shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:120 [106]. An existing jail for which approval has been granted may continue without change, except [if] when a significant alteration [an alteration], addition or change of occupancy occurs.
(2) Each exit shall be:
(a) Distinctly and permanently marked;
(b) Visible at all times;
(c) Kept clear; and
(d) Maintained in usable condition.
(3) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situ-
tion.
(4) In each area where a prisoner may be confined, there shall be an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.
(5) Each jail shall have an approved fire alarm and smoke detection system.
(o) Each direct supervision area shall have an approved fire-suppression system.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 3:080. Sanitation; hygiene.

RELATES TO: KRS 441.055
STATUTORY AUTHORITY: KRS [13A.350.] 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation sets forth procedures to provide proper sanitation and hygiene in full-service jails.

Section 1. Procedures. (1) The jailer shall provide for the control of vermin and pests. (2) The jail shall provide for both solid and liquid waste disposal. (3) The jailer shall have a written preventative maintenance plan that [which] includes but is not limited to:
(a) A cleaning schedule for various locations and items in the jail.
(b) A schedule for inspections by the jailer.
(c) A schedule for trash and garbage removal.
(d) A schedule for periodic inspection and maintenance of specific mechanical equipment.
(e) The jail shall have fresh [and purified] air circulating within prisoner [inmate] living and activity areas.
(f) The jail shall furnish clean sanitized bedding to prisoners [inmates] except in holding areas and unless it is determined to be detrimental to a particular prisoner [inmate], issuance of bedding in decontamination is optional. Bedding shall include:
(a) One (1) mattress.
(b) One mattress-cover.
(c) One blanket, when conditions require.
(d) Two sheets [6].
(e) One (1) pillow, if not part of the mattress.
(f) [if] One (1) pillowcase, if applicable.
(g) Prisoner [inmate] bedding shall be cleaned on a regular basis according to the following schedule:
(a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week.
(b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner.
(c) Mattresses and pillows shall be cleaned quarterly.
(d) Each prisoner [inmate] shall be issued a clean towel upon admission to a prisoner living area [an inmate-living area]. Towels shall be laundered weekly or more as needed [every fourth day].
(e) All floors, toilets, and sinks in the jail shall be washed daily or more often as necessary.
(f) All showers shall be cleaned on at least a weekly basis.
(g) All prisoners [inmates] assigned to prisoner [inmate] living areas shall be issued or permitted to obtain the following hygiene items:
1. (a) Soap.
2. (b) Toothbrush.
3. (c) Toothpaste.
4. (d) Toilet paper.
5. (e) Female sanitary supplies (if [where] applicable).
(b) Indigent prisoners [inmates] shall be furnished these items by the jail.
(1) All prisoners [inmates] shall be permitted to shave a minimum of three (3) times per week. [No] Communal razors shall not be used [shave daily. If a communal razor is used, it shall be sanitized before each use].
(2) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners [inmates].
(3) All prisoners [inmates] shall be provided shower facilities within twenty-four (24) hours of admission. Prisoners [inmates] shall be permitted to shower daily.
(4) All prisoners [inmates] in the jail shall be provided with hot and cold running water in showers and lavatories.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 3:090. Medical services.

RELATES TO: KRS 441.045, 441.047, 441.055
STATUTORY AUTHORITY KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health standards for jails which elect to house state prisoners [and/or jails which do not elect to hold state prisoners]. This administrative regulation sets forth procedures for the proper delivery of medical services in full-service [both types of] jails.

Section 1. Procedure Services. (1) The jail's medical services shall be provided by contracting with a health care provider licensed in Kentucky.
(2) The medical staff shall not be restricted by the jailer in the performance of their duties except to adhere to the jail's security requirements.
(3) All health care staff working in the jail shall comply with state licensure and certificate requirements commensurate with health care personnel working elsewhere in the community. Copies of licenses and certificates for health care staff employed by the jail shall be maintained on file within the jail.
(4) A daily medical log shall be maintained documenting specific medical treatment rendered in the jail. This log shall be kept current to the preceding hour.
(5) Prisoners shall not perform any medical functions within the jail.
(6) Prisoners shall be informed verbally and in writing at the time of admission the methods of gaining access to medical care within the jail.
(7) All medical procedures shall be performed according to
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[written-and-standing] orders issued by the responsible medical authority. All medical procedures that require hospital care shall use the Kentucky Correctional Health Care Services Network, or other contracted health care provider.

(8) Medical screening shall be performed by the receiving officer on all prisoners upon their admission to the jail and before their placement in prisoner living areas. The findings of this medical screening shall be recorded on a printed screening form approved by the medical authority. The medical screening inquiry shall include but not be limited to:

(a) Current illnesses and health problems.
(b) Medications taken and special health requirements.
(c) Screening of other health problems designated by the medical authority.
(d) Behavioral observation, state of consciousness and mental status.
(e) Notation of body deformities, markings, bruises, lesions, jaundice, ease of movement, and other distinguishing characteristics.
(f) Condition of skin and body orifices, including rashes and infestations.
(g) Disposition and referral of prisoners to qualified medical personnel on an emergency basis.

(9) Sick call conducted by the medical authority shall be available to each prisoner as follows:

(a) Facilities with fewer than 100 prisoners shall hold sick call one (1) day per week, at a minimum.
(b) Facilities with 100 to 300 prisoners shall hold sick call three (3) days per week, at a minimum.
(c) Facilities with more than 300 prisoners shall hold sick call four (4) days per week, at a minimum.

(10) Deputy jailers and correctional officers shall have current training in standard first aid equivalent to that defined by the American Red Cross.

(11) At least one (1) jail staff member per shift shall be trained and certified to perform approved CPR (Cardiopulmonary Resuscitation).

(12) Emergency medical and dental care shall be available to all prisoners commensurate with the level of care available to the community.

(13) Medical research shall not be permitted on any prisoner in the jail.

(14) Access to the prisoner's medical file shall be controlled by the medical authority and the jailer. The physician-patient privilege shall apply to the medical record. The medical record shall be separate from custody and other administrative records of the jail.

(15) All examinations, treatments, and procedures affected by informed consent standards in the community shall be observed for prisoner care. [For minors, the informed consent of the parent, guardian, or legal custodian shall apply if required by law.]

(16) In accordance with KRS 72.025, a postmortem examination shall be conducted on all prisoners who die while in the custody of the jailer.

(17) The jailer shall have written detouring procedures.

(18) All jail staff or contract staff who administer medications to prisoners shall be trained in the proper procedures as outlined in the Policy and Procedures Manual.

(19) The jail shall have first aid kits available at all times.

(20) A prisoner who has been prescribed treatment by a recognized medical authority and cannot receive that treatment in the jail shall be moved to another confinement facility that [which] can provide the treatment or may be moved to a hospital.

(21) If [when] emergency care is needed, it shall be provided.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

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JUSTICE AND PUBLIC SAFETY CABINET
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 3:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [which] elect to house state prisoners. This administrative regulation establishes admission, search, and release procedures for full-service jails.

Section 1. Policy and Procedure. Each jail shall develop written admission, orientation, and release procedures to be included in the jail’s policy and procedure manual.

Section 2. Admission. (1) A person in need of emergency medical attention shall not be admitted to the jail until a medical examination is conducted. A Denial of Admission document [form] shall be completed, listing the reason for denial. The document [form] shall be signed by jail personnel on duty.

(2) Jail personnel shall assure that each prisoner is committed under proper legal authority by a duly authorized officer.

(3) An intake form shall be completed on every new admission and shall include the following:

(a) Time and date of commitment;
(b) Name, alias, nickname;
(c) Official charges, cite five (5) digit UOR number;
(d) Authority ordering commitment;
(e) Unit of government to be billed;
(f) Signature and title of arresting or committing officer;
(g) Date of birth;
(h) Race;
(i) Sex;
(j) Height and weight;
(k) Current or last known address;
(l) Telephone number;
(m) Marital status;
(n) Spouse or next of kin;
(o) Emergency contact including name, relation, address, telephone number;
(p) Employer, place of employment, telephone number;
(q) Social Security number;
(r) Health status including current medications, known allergies, diet or other special medical needs;
(s) Blood type, if known;
(t) The name of any known person in the jail who might be a threat to the prisoner; and
(u) Mental health history including past hospitalizations, comprehensive care treatment, current treatment, and medication.

Section 3. Searches. (1) Jail personnel shall conduct a search of each prisoner and his possessions.

(a) Each prisoner shall be searched for contraband in a manner staff reasonably determine is necessary to protect the safety of fellow prisoners, staff, and institutional security.

(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion shall be based upon one (1) or more of the following:

1. A current offense involving felony violence, drug charges, or fugitive status;
2. A criminal history of offenses involving the use of a weapon or the possession of contraband;
3. Institutional behavior, reliable information, or history that
indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of contraband;

4. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access, or

5. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance, and the prisoner was not in custody prior to the court appearance.

(c) The jailer shall require that a strip search or body cavity search shall be documented. Documentation shall include:

1. Basis for reasonable suspicion to conduct a search;
2. Date and time of search;
3. Name of prisoner;
4. Name of person conducting search;
5. Type of search; and
6. Result of search.

(d) A strip search shall be conducted by a staff person of the same sex as the prisoner and in a private area.

(e) Probing of body cavities shall:

1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity;
2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.

(2) Each jail shall develop written policies and procedures, specifying the personal property that a prisoner may retain in his possession.

(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving officer and the prisoner and kept for the jail record.

(b) If the prisoner is intoxicated, is a mental inquest detainee, or is mentally ill or mentally retarded, there shall be at least one (1) witness to verify the transaction in paragraph (a) of this subsection. As soon as the prisoner is able to understand and account for his actions, the prisoner shall sign the receipt.

(c) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

(3) The jailer may establish a written policy on hair length or beards if based on actual concerns for safety, security, identification, or hygiene. A prisoner may be permitted freedom in personal grooming if not in conflict with the jail's policy. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding religious practice.

Section 4. Orientation. (1) As soon after assignment as possible, an oral or written orientation shall be made available to each prisoner.

(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:

(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visitation, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;
(b) Rules of prisoner conduct established pursuant to 501 KAR 3:060, Section 1(3);
(c) Disciplinary procedures;
(d) Information regarding work, educational and vocation training, counseling, and other social service programs; and
(e) Procedures for making a request or registering a complaint with the jail staff, judiciary, or department personnel. Prisoners shall follow the grievance procedures and attach a copy of the grievance documents if requesting a review by the Department of Corrections.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.

(2) When a prisoner is released or removed for a legal purpose to the custody of another, the identity of receiving authority shall be verified.

(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.

(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.

(5) Before [all personnel the] jailer releases a prisoner to an out-of-state jurisdiction, [all personnel he] shall consult with the appropriate prosecutorial office in the county.

(6) Property, not legally confiscated or retained, received from the prisoner upon admission shall be returned to the prisoner at the time of release.

(7) Each prisoner shall sign a receipt for property returned at the time of release.

(8) Complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

[Section 6. Incorporation by Reference. (1) "Denial of Admission" form is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Corrections, 2459 Lawrencesburg Road, P.O. Box 2400, Frankfort, Kentucky 40601-2400, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(5) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 3:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.047, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [which] elect to house state prisoners. This administrative regulation establishes procedures to ensure the protection of rights of prisoners in those full-service jails.

Section 1. Policy and Procedure. (1) Each jail shall have a written statement of prisoner rights which shall address:

(a) Access to court.
(b) Access to attorney.
(c) Mail.
(d) Telephone.
(e) Grievance procedure.
(f) Search and seizure.
(g) Disciplinary procedure.
(h) Racial segregation.
(i) Medical care.
(j) Mental health care, if available.
(k) Religion.

(2) The statement of prisoner rights shall be posted in a conspicuous place in the booking area and living areas of the jail, and a copy shall be made available to the prisoner as soon as possible. Upon admission, a prisoner shall sign that he has received a written copy of the prisoner's rights.

(3) The jailer shall not prohibit a prisoner's right of access
to the judicial process.

(4) [30] The jailer shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative.

(5) [40] The jailer shall have a written policy which defines the jail's visitation rules and regulations, which shall include:

(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend.
(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner is assessed a disciplinary penalty for an infraction of rules governing visitation or the prisoner's current institutional behavior presents an imminent danger or threat of danger to staff or other prisoners.
(c) A visit shall not be less than fifteen (15) minutes.
(d) Two (2) or more persons permitted to visit at the same time shall count as one visit.
(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) [60] Attorneys, clergy, and medical personnel shall be permitted to visit a prisoner at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) [60] Each visitor shall register before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) (4) of this section or established in subsection [6] [65] of this section.

(8) [70] A prisoner shall not be restricted in regard to whom he may have as a visitor unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:
1. Represents a clear and present danger to security;
2. Has a past history of disruptive conduct at the jail;
3. Is under the influence of alcohol or drugs;
4. Refuses to submit to a search; or
5. Refuses to show proper identification; or
(b) The prisoner refuses the visit.

(9) [60] Except for visitors pursuant to subsection 6 of this section, the jail staff may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas for [jailer shall not listen to the visitor's conversation, but may observe the visitor for [security reasons].

Section 2. Mail. (1) The jailer shall have written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and
(b) Provides for security practices consistent with the operation of the jail.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner's [his] choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer or his designee shall maintain a log of telephone calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time and party contacted.

(3) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(4) A minimum of five (5) minutes shall be allotted for each phone call.

(5) [Telephone calls shall not be routinely monitored.] If calls are monitored, the prisoner shall be notified.

(6) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) A prisoner shall be granted the right to practice his religion within limits necessary to maintain institutional order and security.

(2) Each prisoner shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services. If [provided] the security and order of the jail shall not be jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) Response, within ten (10) days [a reasonable time], to all grievance complaints, unless waived by the prisoner;
(2) Equal access for each prisoner;
(3) Guarantee against reprisal; and
(4) Resolving legitimate complaints.

Section 7. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

(1) Jailers shall be required to report suicides or attempted suicides that constitute a serious health situation to the Kentucky Department of Corrections.

(2) All jail personnel shall receive a minimum of four (4) hours of mental health training within their first year of service.

(3) Each jail shall have a written policy and procedure outlining staff response to detainees who are at risk for suicide or have attempted or completed suicide.

(4) The Kentucky Department of Corrections and the Kentucky Jailers Association shall coordinate the development of and revisions to mental health training curriculum.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to filing the regulation with the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.020(5).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40622-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARS, April 12, 2005)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 106, 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) "Department of
Corrections Policies and Procedures, January 12, 2005 [November
9, 2004]" are incorporated by reference. Department of Corrections
Policies and Procedures include:
1.1 Legal Assistance for Corrections Staff (Effective 7/28/92)
1.2 News Media (Effective 7/13/98)
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 8/15/01)
2.1 Inmate Canteen (Effective 12/17/88)
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 (Effect-
ive 11/12/98)
3.4 Equal Employment Opportunity Complaint Procedure (Ef-
fective 7/15/02)
3.5 Sexual Harassment (Effective 11/12/98)
3.6 Background Investigation and Employment of Exoffenders
(Amended 4/12/05 [4/12/05]) [Criminal History Checks on All Per-
sonnel and the Employment of Exoffenders (Effective 11/12/98)]
3.7 Shifts, Posts and Days Off Assignment (Effective 6/16/99)
3.10 Appearance and Dress for Nonuniformed Staff (Amended
11/9/04)
3.11 Drug Free Workplace Employee Drug Testing (Amended
11/9/04)
3.12 Institutional Staff Housing (Effective 8/15/01)
3.15 Antiharassment Policy (Effective 5/14/01)
3.16 Employee Health Issues (Added 4/12/05)
3.18 Employee Insurance Coverage (Effective 11/17/00)
3.20 Communication and Recording Devices (Effective
3/18/99)
3.22 Staff Sexual Misconduct (Amended 2/13/04)
4.2 Staff Training and Development (Amended 4/12/05
[1/12/05] [Effective 8/15/01])
4.3 Firearms and Chemical Agents Training (Amended 4/12/05
[1/12/05] [Effective 8/15/01])
4.6 Operation and Safety of Corrections Firing Ranges (Effect-
ive 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 6/28/01)
7.2 Asbestos Abatement (Effective 8/15/01)
8.1 Occupational Exposure to Bloodborne Pathogens (Effect-
ive 1/21/03)
8.2 Fire Safety (Effective 2/15/01)
8.6 Extraordinary Occurrence Report (Amended 6/10/03)
8.7 Notification of Extraordinary Occurrence (Amended 11/9/04)
9.4 Transportation of Inmates to Funerals or Bedside Visits
(Amended 11/9/04)
9.6 Execution (Effective 12/17/99)
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 (Amended 11/9/04)
10.3 Safekeepers and Contract Prisoners (Inmates) (Amended
9/15/04)
11.1 Nutritional Adequacy of Inmate (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 (Amended 4/12/05
[1/12/05] [2/13/04])
13.3 Medical Alert System (Effective 1/16/03)
13.4 Health Program Audits (Effective 7/22/96)
13.5 Advance Healthcare Directives (Added 4/12/05)
13.6 Sex Offender Treatment Program (Effective 11/17/00)
13.7 Involuntary Psychotropic Medication Policy (Effective
12/7/85)
13.8 Substance Abuse Treatment Program (Effective 12/17/98)
13.9 Dental Services (Effective 1/16/03)
13.10 Serious Infectious Disease (Amended 2/13/04)
13.11 Employee Health Issues [Tuberculosis Program]
(Amended 2/13/04)
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 (Amended 2/13/04)
14.5 Board of Claims (Effective 2/15/01)
14.6 Inmate Grievance Procedure (Amended 9/15/04)
14.7 Sexual Abuse Assault Prevention and Intervention
Programs (Added 4/12/05)
15.1 Hair, Grooming and ID Card Standards (Effective 2/19/01)
15.2 Rule Violations [Offenses] and Penalties (Amended
4/15/03)
15.3 Meritorious Good Time (Effective 2/13/04)
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)
16.1 Inmate Visits (Amended 9/15/04)
16.2 Inmate Correspondence (Amended 2/13/04)
16.3 Inmate Access to Telephones (Effective 11/17/00)
16.4 Inmate Packages (Amended 2/13/04)
17.1 Inmate Personal Property (Amended 11/9/04)
17.2 Assessment Center Operations (Amended 4/15/03)
17.3 Controlled Intake of Inmates (Amended 1/12/05 [4/15/03])
17.4 Administrative Remedies: Sentence Calculations
(Amended 2/13/04)
18.1 Classification of the Inmate (Amended 4/12/05 [9/15/04])
18.2 Central Office Classification Committee (Effective
9/14/99)
18.5 Custody and Security Guidelines (Amended 4/15/03)
18.7 Transfers (Amended 2/13/04)
18.9 Out-of-state Transfers (effective 8/15/01)
18.11 Placement for [Residential] Mental Health Treatment in
CPTU or KCPC (Effective 12/19/01)
18.12 Referral Procedure for Inmates Adjudicated Guilty But
Mentally Ill (Effective 11/17/00)
18.13 Population Categories (Effective 8/15/01)
18.15 Protective Custody (Amended 1/12/05 [9/15/04])
18.16 Information to the Parole Board (Effective 12/19/01)
18.17 Interstate Agreement on Detainers [Transfers] (Effective
2/17/95)
18.18 International Transfer of Inmates (Effective 8/15/01)
19.1 Governmental [Government] Services Program (Amended
4/15/03)
19.2 Sentence Credit for Work (Added 2/13/04)
19.3 Inmate Wage/Time Credit Program (Amended 1/12/05
[9/19/04])
20.1 Educational Programs and Educational Good Time (Effect-
ive 1/16/03)
22.1 Privilege Trips (Effective 7/28/92)
23.1 Religious Programs (Effective 1/16/03)
25.1 Gratuities (Effective 7/28/92)
25.2 Public Official Notification of Release of an Inmate
(Amended 4/15/03)
25.3 Prerelease Program (Effective 7/28/92)
25.4 Institutional Inmate Furloughs (Amended 2/13/04)
25.6 Community Center Program (Effective 12/19/01)
(Amended 1/12/05) [Effective 12/19/01]
25.8 Extended Furlough (Amended 4/12/05 [1/12/05] [Effective
7/19/02])
25.10 Administrative Release of Inmates (Effective 11/1/96)
25.11 Victim Notification (Effective 12/16/01)
26.1 Citizen Involvement and Volunteer Service Program
(Added 9/15/04)
27.01 Probation and Parole Procedures (Effective
1800)
12/19/01
27-02-01 Duties of Probation and Parole Officers (Effective 11/17/00)
27-03-01 Workload Formula (Effective 12/19/01)
27-05-01 Testimony, Court demeanor and Availability of Legal Services (Effective 8/15/01)
27-09-01 Availability of Supervision Services (Effective 9/16/00)
27-06-02 Equal Access to Services (Effective 8/15/01)
27-07-01 Cooperation with Law-Enforcement Agencies (Effective 8/14/01)
27-08-01 Use of Force (Amended 4/15/03)
27-09-01 Kentucky Community Resources Directory (Effective 8/15/01)
27-10-01 Pretrial Diversion (Effective 5/14/01)
27-11-02 PreRelease Probation (Effective 6/16/99)
27-12-01 Supervision-Case Classification (Effective 5/14/01)
27-12-02 Risk Assessment (Effective 8/15/01)
27-12-03 Initial Interview (Effective 9/16/99)
27-12-04 Conditions of Supervision and Request for Modification (Effective 9/16/99)
27-12-05 Releaseee's Report (Effective 9/16/99)
27-12-06 Grievance Procedures for Offenders (Effective 11/17/00)
27-12-07 Employment, Educational, and Vocational Referrals (Effective 9/16/99)
27-12-08 Supervision Plan (Effective 8/15/01)
27-12-09 Casebook (Effective 12/19/01)
27-12-11 Guidelines for Monitoring Financial Obligations (Effective 8/15/01)
27-12-13 Community Service Work (Effective 12/19/01)
27-12-14 Offender Travel (Effective 9/16/99)
27-13-01 Drug and Alcohol Testing of Offenders (Effective 12/19/01)
27-13-02 Alcohol Detection (Effective 9/16/99)
27-14-01 Interstate Compact Transfers (Effective 5/14/01)
27-14-02 Interstate Compact-Off State Probation and Parole Violation (Effective 2/15/01)
27-15-01 Supervision Reports, Violations, and Unusual Incidents (Effective 8/15/01)
27-16-01 Search, Seizure, and Custody; Disposal of Evidence (Effective 8/15/01)
27-17-01 Absconder Procedures (Effective 9/16/99)
27-18-01 Probation and Parole Issuance of Detainer or Warrant (Effective 9/16/99)
27-19-01 Preliminary Revocation Hearing (Effective 8/15/01)
27-20-01 Division of Probation and Parole Controlled Intake Program (Effective 11/17/00)
27-20-02 Prisoner Intake Notification (Effective 12/17/99)
27-20-03 Prisoner Status Change (Effective 8/15/01)
27-21-01 Apprehension and Transportation of Probation and Parole Violators (Effective 12/19/98)
27-23-01 In- State Transfer (Effective 1/18/03)
27-24-01 Closing Supervision Report (Effective 8/15/01)
27-24-02 Reinstatement of Offenders to Active Supervision (Effective 1/16/00)
27-26-01 Assistance to Former Offenders and Discharges (Effective 8/15/01)
27-27-01 Restoration of Civil Rights (Effective 12/19/01)
27-28-01 Firearms or Explosives Restoration (Effective 8/15/01)
27-30-01 Offender Registration (Effective 4/14/01)
27-30-02 Conditional Discharge of Sex Offenders (Effective 5/14/01)
27-31-01 Use of Chemical Agents in Probation and Parole (Effective 9/16/99)
28-01-01 Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments (Effective 8/15/01)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities) (Effective 2/15/01)
28-01-03 Presentation, Postsentence, Supplemental and Partial Investigations (Effective 12/17/98)
28-01-08 Probation-Parole Investigation Reports, Partial Investigation Reports and Submission Schedule (Effective 8/15/01)
28-01-09 Release of Information of Factual Content on Presence or Postsentence or Postrelease Investigation Reports (Effective 8/14/01)
28-03-04 Parole Plans, Halfway Houses, Extended Furlough, Sponsorship, and Gradual Release (Effective 8/14/01)
28-03-05 Expeditious Release, Parole Plans (Effective 8/15/01)
28-04-01 Furlough Verification (Effective 8/14/01)
28-05-04 Out-of-state Investigations (Effective 7/1/88)
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, Department of Corrections, PO Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: December 13, 2004
FILED WITH LRC: January 12, 2005 at 4 p.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, April 12, 2005)

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY KRS 196.035, 197.020, 433.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035; 197.020, 433.470, 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 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 Roederer Correctional Complex.

Section 1. Incorporation by Reference. (1) Roederer Correctional Complex policies and procedures, February 15, 2005 [May 13, 2003], are incorporated by reference. Roederer Correctional Complex policies and procedures include:

RCC 01-03-01 Institutional Organization Assignment of Responsibility and Channels of Communication
RCC 01-04-01 Monthly Reports Performance Criteria
RCC 01-06-01 Inmate Access to and Communication with Staff
RCC 01-08-01 Public Information and News Media Access
RCC 01-10-01 Cooperation with Outside Bodies; Including Courts, ACA, Governmental Legislative, Executive, and Community Agencies
RCC 02-01-01 Fiscal Management Organization
RCC 02-01-02 Fiscal Management Accounting Procedures
RCC 02-01-03 Fiscal Management Agency Funds
RCC 02-01-04 Fiscal Management Insurance
RCC 02-02-01 Fiscal Management Budget
RCC 02-02-02 Inmate Control of Personal Funds
RCC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
RCC 02-02-05 Inmate Canteen Services
RCC 02-03-01 Fiscal Management Audits
RCC 02-04-01 Purchase Orders
RCC 02-04-02 Processing of Invoices
RCC 02-06-01 Property Inventory
RCC 03-02-01 Institutional Smoking Areas
RCC 04-01-01 Employee Training and Development
RCC 04-01-02 First Aid and CPR Training
RCC 06-01-01 Offender Records
RCC 06-03-01 Records Release of Information
VOLUME 31, NUMBER 11 – May 1, 2005

RCC 06-03-02 Storage of Expunged Records
RCC 05-04-01 Court Trips
RCC 06-04-02 Receipt of Order of Appearance
RCC 07-01-01 Preventative Maintenance Plan
RCC 07-02-01 Permit Required Confined Space
RCC 07-03-01 Mechanical Equipment Repair and Control of Hazardous Energy
RCC 08-01-01 Fire Prevention
RCC 09-04-03 Duties and Responsibilities of the Fire and Safety Officer
RCC 10-01-02 Temporary Holding Cell Guidelines
RCC 11-01-01 Food Service: General Guidelines
RCC 11-02-01 Food Service: Security
RCC 11-03-01 Dining Room Guidelines
RCC 11-04-01 Food Service: Meals
RCC 11-04-02 Food Service: Menu, Nutrition and Alternative Items
RCC 11-05-02 Health Requirements of Food Handlers
RCC 11-06-01 Food Service: Inspections and Sanitation
RCC 11-07-01 Food Service Purchasing and Storage
RCC 12-01-01 Sanitation, Living Conditions and Clothing Issuances
RCC 12-01-02 Bed Areas
RCC 12-01-03 General Guidelines for Living Units
RCC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
RCC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
RCC 12-03-02 Barber Shop Services and Equipment Control
RCC 12-04-01 Institutional Inspections
RCC 12-05-02 Use of Noncombustible Receptacle
RCC 13-01-01 Organization of Health Services (Amended 4/12/05 [2/21/05])
RCC 13-02-01 Health Maintenance Services: Sick Call and Pill Call (Amended 4/12/05 [2/21/05])
RCC 13-03-01 Dental Procedures and Sick Call (Amended 4/12/05 [2/21/05])
RCC 13-04-01 Preliminary Health Evaluation and Establishment of Offender [Inmate] Medical Records (Amended 2/15/05)
RCC 13-04-02 Medical Intake Processing for Offenders [Inmates] in Hold Status (Amended 4/12/05 [2/16/06])
RCC 13-05-02 Licensure and Training Standards for Medical Department
RCC 13-06-01 Suicide Prevention and Intervention Program
RCC 13-06-03 Emergency Medical and Dental Care Services (Amended 4/12/05 [2/21/05])
RCC 13-07-01 Health Records (Amended 4/12/05 [2/15/05])
RCC 13-07-03 Use of Pharmaceutical Products (Amended 4/12/05 [2/21/05])
RCC 13-07-04 Self-administered Medication Program (Amended 2/15/05)
RCC 13-09-01 Notification of Offender [Inmate] Family in the Event of Serious Illness, Surgery, or Offender [Inmate] Death (Amended 4/12/05 [2/14/06])
RCC 13-10-01 Health Education and Special Health Programs (Amended 4/12/05 [2/15/05])
RCC 13-11-01 Informed Consent (Amended 4/12/05 [2/16/05])
RCC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
RCC 13-13-01 Identification of Inmates with Psychological, Psychiatric or Severe Medical Disabilities and Transfer Guidelines (Amended 4/12/05 [2/16/05])
RCC 13-15-01 Medical Restraints (Amended 2/15/05)
RCC 13-16-01 Specialized Health Services (Amended 4/12/05 [2/21/05])
RCC 13-17-01 Vision Care, [and] Optometry Services, Prostheses, and Orthodontic Devices (Amended 2/15/05)
RCC 13-18-01 Infection Control (Amended 2/15/05)
RCC 13-19-01 Medical Waste Management (Amended 4/12/05 [2/14/06])
RCC 13-20-01 Medical Services Co-pay (Amended 4/12/05 [2/15/06])
RCC 13-21-01 Mental Health Services [Added 4/12/05 [2/15/06]]
RCC 13-22-01 First Aid Kits [Added 2/15/05]
RCC 13-23-01 Injury Prevention [Added 4/12/05 [2/16/05]]
RCC 13-24-01 Substance Abuse and Chemical Dependency Program [Added 2/15/05]
RCC 14-01-01 Inmate Rights and Responsibilities
RCC 14-02-01 Legal Services Program
RCC 14-03-01 Marriage of Inmates
RCC 16-01-01 Inmate Visiting (Amended 3/13/03)
RCC 16-01-02 Night Visiting Program (Amended 3/13/03)
RCC 16-01-03 Extended and Special Visits (Amended 3/13/03)
RCC 16-02-01 Telephone Communications (Amended 3/13/03)
RCC 16-03-01 Mail Regulations (Amended 5/13/03)
RCC 17-01-01 Assessment/Orientation Procedure for Intransystem Transfers
RCC 17-01-02 Identification Department Admission and Discharge Procedures (Amended 5/13/03)
RCC 17-03-01 Inmate Personal Property and Property Control (Amended 3/13/03)
RCC 17-05-02 Housing Unit Assignment Assessment and Classification Center (Amended 5/13/03)
RCC 17-05-03 Notifying Inmate's Families of Admission and Procedures for Mail and Visiting
RCC 17-05-04 Assessment Unit Operations, Rules and Regulations
RCC 17-05-05 Assessment Unit Operations and Reception Program
RCC 18-01-01 Classification Committees (Amended 3/13/03)
RCC 18-02-01 Classification Process (Amended 3/13/03)
RCC 18-03-01 Casework Services
RCC 19-01-01 Job and Program Assignments (Amended 3/13/03)
RCC 19-03-01 Farm Management and Production Guidelines
RCC 20-01-01 Education Program
RCC 20-01-02 Testing and Verification
RCC 20-01-03 Vocational Horticulture Program
RCC 21-01-01 Library Services (Amended 5/13/03)
RCC 22-01-01 Recreation and Inmate Activities (Amended 3/13/03)
RCC 22-03-01 Inmate Clubs and Organizations
RCC 22-03-02 Alcohol Anonymous and Narcotic Anonymous Club Sponsored Picture Project
RCC 22-04-01 Arts and Crafts Program (Amended 3/13/03)
RCC 23-01-01 Religious Services (Amended 5/13/03)
RCC 24-01-01 Social Services and Counseling (Amended 3/13/03)
RCC 25-01-01 Furloughs (Amended 5/13/03)
RCC 25-05-01 Inmate Discharge Procedure (Amended 3/13/03)
RCC 26-01-01 Citizens Involvement and Volunteer Services Program (Amended 5/13/03)
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JOHN D. REES, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.
JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, April 12, 2005)

501 KAR 6:270. Probation and parole policies and procedures.

RELATES 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 Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures, April [January] 12, 2005" are incorporated by reference. Probation and Parole Policies and Procedures include:

27-01-01 Probation and Parole Procedures (Added 1/12/05)
27-02-01 Duties of Probation and Parole Officers (Added 1/12/05)
27-02-02 Probation and Parole Officers Telecommuting Program (Added 1/12/05)
27-03-01 Workload Formula (Added 1/12/05)
27-05-01 Testimony, Court Demeanor and Availability of Legal Services (Added 1/12/05)
27-06-01 Availability of Supervision Services (Added 1/12/05)
27-06-02 Equal Access to Services (Added 1/12/05)
27-07-01 Cooperation with Law Enforcement Agencies (Added 1/12/05)
27-08-01 Use of Force (Added 4/12/05 [1/12/06])
27-09-01 Kentucky Community Resources Directory (Added 1/12/05)
27-10-01 Pretrial Diversion (Amended 4/12/05 [Added 1/12/06])
27-11-02 Prerelease Probation (Added 4/12/05)
27-12-01 Supervision: Case Classification (Added 1/12/05)
27-12-02 Risk Scale Assessment (Amended 4/12/05 [Added 1/12/06])
27-12-03 Initial Interview (Added 1/12/05)
27-12-04 Conditions of Supervision Document and Request for Modification (Added 1/12/05)
27-12-05 Releasee's Report Document (Added 1/12/05)
27-12-06 Grievance Procedures for Offenders (Added 1/12/05)
27-12-07 Employment, Educational and Vocational Referrals (Added 1/12/05)
27-12-08 Supervision Planning (Amended 4/12/05 [Added 1/12/06])
27-12-09 Casebook (Added 1/12/06)
27-12-11 Guidelines for Monitoring Financial Obligations (Amended 4/12/05 [Added 1/12/06])
27-12-12 Community Service Work (Added 1/12/05)
27-12-14 Offender Travel (Amended 4/12/05 [Added 1/12/06])
27-13-01 Drug and Alcohol Testing of Offenders (Amended 4/12/05 [Added 1/12/06])
27-13-02 Alcohol Detection (Added 4/12/05)
27-14-01 Interstate Compact (Amended 4/12/05 [Added 1/12/06])
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation (Added 1/12/06)
27-15-01 Supervision Reporting Requirements and Unusual Incidents (Added 1/12/05)
27-16-01 Search; Seize; Chain of Custody; Disposal of Evidence (Amended 4/12/05 [Added 1/12/06])
27-17-01 Absconder Procedures (Amended 4/12/05 [Added 1/12/06])
27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 4/12/05 [Added 1/12/06])

27-19-01 Preliminary Revocation Hearing (Amended 4/12/05 [Added 1/12/06])
27-20-01 Division of Probation and Parole Controlled Intake Program (Added 1/12/05)
27-20-02 Prisoner Intake Notification (Added 1/12/05)
27-20-03 Prisoner Status Change (Added 1/12/05)
27-21-01 Apprehension of Probation and Parole Offenders (Amended 4/12/05 [Added 1/12/05])
27-23-01 In-state Transfer (Added 1/12/05)
27-24-01 Releasing Offender from Active Supervision (Added 1/12/05)
27-24-02 Reinstatement of Offenders to Active Supervision (Added 1/12/05)
27-26-01 Assistance to Former Offenders and Dischargees (Amended 4/12/05 [Added 1/12/05])
27-27-01 Restoration of Civil Rights (Added 1/12/05)
27-28-01 Firearms or Explosives Restoration (Added 1/12/05)
27-30-01 Offender Registration (Amended 4/12/05 [Added 1/12/06])
27-30-02 Conditional Discharge of Sex Offenders (Added 1/12/05)
27-30-03 Supervision: Sex Offenders (Added 1/12/05)
27-31-01 Use of Chemical Agents in Probation and Parole (Added 1/12/05)
27-31-02 Critical Incident Reporting (Added 1/12/05)
27-32-01 Student Intern Program (Amended 4/12/05 [Added 4/12/06])
28-01-01 Probation and Parole Investigation Reports, Introduction, Definitions, Confidentiality, Timing, and General Comments (Amended 4/12/05 [Added 1/12/06])
28-01-02 Probation and Parole Investigation Documents (Administrative Responsibilities) (Added 1/12/05)
28-01-03 Presentence, Postsentence, Supplemental and Partial Investigations (Added 1/12/05)
28-01-08 Probation and Parole Investigation Reports, Partial Investigation Reports, and Submissions Schedule (Amended 4/12/05 [Added 1/12/06])
28-01-09 Release of Information of Factual Content on Presentence or Postsentence Investigation Documents (Added 1/12/05)
28-03-01 Parole Planning, investigation request, halfway houses, Parole Officer to monitor employment search and sponsorship (Amended 4/12/05 [Added 1/12/06])
28-03-02 Expedite Release Parole Planning Investigative Request (Added 1/12/05)
28-04-01 Furlough Verifications (Added 1/12/05)
28-05-01 Out-of-State Investigations (Added 1/12/06)
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JOHN REES, Commissioner
APPROVED BY AGENCY: December 13, 2004
FILED WITH LRC: January 12, 2005 at 4 p.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)


RELATES TO: KRS 441.055
STATUTORY AUTHORITY: KRS 441.045, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate...
administrative regulations establishing minimum standards for jails that elect to house state prisoners [detention-facilities]. This administrative regulation establishes personnel procedures to be followed in restricted custody centers.

Section 1. Staffing. (1) Each center shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or fiscal court, the Department of Corrections may conduct a staffing analysis.

(2) If a female prisoner is housed in the center, the center shall provide a female deputy to perform twenty-four (24) hour awake supervision.

Section 2. Qualifications. Security employees shall be at least twenty-one (21) years of age.

Section 3. Compensation. Each employee shall receive a wage that is [salary] at least equal to the State Minimum Wage Law except if [where] Federal Minimum Wage Law applies.

Section 4. Training. Jail personnel whose jobs require prisoner supervision shall successfully complete a minimum of sixteen (16) hours annual in-service training delivered by the department on a regional or local basis or approved by the department if delivered by another agency.

Section 5. Policy and Procedure. Written policy shall specify that equal employment opportunities exist for every staff position.

Section 6. Physical Fitness. The jailer shall ensure that a level of physical fitness is maintained that will allow each employee to satisfactorily perform his duties.

Section 7. Code of Ethics. (1) The jailer shall make a written code of ethics available to each employee.

(2) The written code of ethics shall be incorporated in the center's policy and procedures manual and shall include the following:

(a) An employee shall not:
1. Exchange a personal gift or a favor with a prisoner, his family, or friend;
2. Accept any form of bribe or unlawful inducement;
3. Perform duties under the influence of an intoxicant or consume an intoxicant while on duty;
4. Violate or disobey an established rule, administrative regulation, or lawful order from a superior;
5. Discriminate against any prisoner on the basis of race, religion, creed, gender, national origin, or other individual characteristic;
6. Employ corporal punishment or unnecessary physical force;
7. Subject a prisoner to physical or mental abuse;
8. Intentionally demean or humiliating a prisoner;
9. Bring a weapon or an item declared as contraband into the center without proper authorization;
10. Engage in critical discussion of staff or any prisoner in the presence of a prisoner;
11. Divulge confidential information without proper authorization;
12. Withhold information which, in so doing, threatens the security of the center, its staff, visitors, or the community;
13. Through negligence, endanger the well-being of self or others;
14. Engage in any form of business or profitable enterprise with a prisoner; or
15. Inquire about, disclose, or discuss details of a prisoner’s crime other than as may be absolutely necessary in performing official duties.

(b) An employee shall:
1. Comply with established rules, administrative regulations, and lawful orders from superiors;
2. Treat prisoners in a fair, impartial manner; and
3. Report a violation of the code of ethics to the jailer.

(3) A violation of the code of ethics shall be made a part of the employee's personnel file.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS; April 12, 2005)


RELATES TO: KRS 441.045, 441.055, 441.064, 441.075
STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes standards and procedures to be followed in the design and construction of restricted custody centers and provides minimum standards for the renovation and construction of restricted custody centers [detention-facilities] and for measuring compliance of existing centers in accordance with KRS 441.055, 441.054, and 441.075.

Section 1. Consultation. The department shall provide to a county government seeking to remodel an existing restricted custody center [detention-facility] or construct a new center [facility], a consultant knowledgeable in the design, utilization, and operation of detention facilities. The consultant shall meet with the appropriate officials of that county and advise them concerning:

(1) Site selection;
(2) Probable need as it relates to capacity and types of prisoners to be housed;
(3) Sources of financing for constructing;
(4) Laws and administrative regulations relating to treatment of prisoners;
(5) Laws and administrative regulations relating to facilities for prisoners;
(6) Sources of revenue for operations of the center;
(7) Probable cost for operation of the center; and
(8) Potential for sharing facilities with adjoining counties.

Section 2. Site Acceptance. A center shall not be built without site acceptance by the department. The following criteria shall be considered in site selection:

(1) Size;
(2) Proximity to court;
(3) Proximity to community resources;
(4) Availability of public transportation;
(5) Environmental health;
(6) Adequate parking; and
(7) Provisions for future expansion.

Section 3. Construction Documents. Prior to the renovation or construction of any restricted custody center [detention-facility], plans and specifications shall be submitted to the department for review and approval. Plans and specifications for jail renovation or construction shall contain the following criteria and documentation:

(1) For major renovation or new construction, a programming phase, to include:
(a) Evaluation of existing facility;
(b) Population analysis as based on the NIC staffing analysis, and may include jail's operations, jail programs, court location and transportation issues;
(c) Space requirements based on population analysis and
standards for the center [facility] and site outlined in this administrative regulation;
(d) Staffing analysis;
(e) Cost analysis to include construction and operation cost;
(f) Financing alternatives, if applicable;
(g) Design-construction time schedule; and
(h) Summary and recommendations.
(2) A schematic phase containing:
(a) A scale drawing of each floor plan with proposed rooms
and areas one-eighth (1/8) inch minimum;
(b) A scale drawing of the site, locating the building, parking
and other facilities one (1) inch = fifty (50) feet;
(c) Documentation of site as to:
1. Size;
2. Proximity to court;
3. Proximity to community resources;
4. Availability of public transportation;
5. Environmental health;
6. Adequate parking; and
(d) Sections through the proposed structure indicating ceiling
heights of rooms, mechanical spaces, roof slopes and other related
information;
(e) Scale elevation drawing of exterior walls;
(f) Schematic cost estimate to include revised construction and
operation costs; and
(g) A revised design-construction time schedule.
(3) A design development phase containing:
(a) A scale drawing on each floor plan with proposed rooms
and areas with their dimensions one-eighth (1/8) inch minimum;
(b) All necessary construction drawings including construction
details;
(c) Specifications for materials and workmanship;
(d) A proposed contract with general and special conditions;
(e) Engineering calculations for the foundation, structure,
heating, ventilating, air conditioning, lighting and plumbing; and
(f) Detailed estimates of cost of land, site development, con-
struction, financing, professional services, equipment and furnish-
ings.
(4) A construction document phase containing:
(a) Revised design development construction drawings follow-
ing review by all applicable agencies, signed by an architect regis-
tered in the Commonwealth of Kentucky, and revised, if necessary,
to include changes required by the department; and
(b) Revised design development specifications of material and
workmanship following review by all applicable agencies.
(5) A contract administration phase containing:
(a) Signed copies of the contracts for construction, financing
and bonding;
(b) Signed copies of the construction permits; and
(c) Documentation of required review by other applicable state
agencies.
(6) Every change order shall be submitted to the department
for review and approval.

Section 4. Approval of Renovation, Construction Plans and
Specifications. (1) Construction shall not begin until the construc-
tion document phase has been approved. The department shall:
(a) Review each submission within thirty (30) days of receipt;
and
(b) Issue a letter of:
1. Approval;
2. Acceptance with required changes; or
3. Rejection, with reasons stated.
(2) Depending on the site of the proposed construction, reno-
vation, or addition the department may combine two (2) or more
phases, as outlined in Section 3 of this administrative regulation,
for review and approval.
(3) A changes to the plans shall require redrawing unless spe-
cifically exempted by the department. Specifications shall be re-
written to reflect a change.

Section 5. Waiver of Compliance. (1) The department may
grant a waiver of the implementation of the physical plant stan-
dards for an existing center if the department determines:
(a) That strict compliance shall cause unreasonable difficulties;
(b) That a waiver shall not seriously affect the security, super-
vision of prisoners, programs, or the safe, healthful, or efficient
operations of the center; and
(c) That compliance shall be achieved in a manner other than
that specified, but in a manner which is sufficient to meet the intent
of this administrative regulation.
(2) If [When] a waiver from a standard is desired, the respon-
sible local authority shall submit a written request to the depart-
ment. The written request shall include the following information:
(a) Citation of the specific standard involved;
(b) Identification and description of the specific difficulties in-
volving in meeting strict compliance;
(c) Description of alternative proposed; and
(d) Provision of sufficient documentation which shall demon-
strate that the waiver, if granted, shall not jeopardize the security,
supervision of prisoners, programs, or the safe, healthful, or effi-
cient operation of the center.
(3) A waiver, if granted by the department, shall apply only to
the petitioner for the specific situation cited and for the period of
time specified and shall include any requirements imposed by the
department as conditions upon the waiver. A waiver shall not be
granted for longer than twelve (12) months. A waiver granted for a
twelve (12) month period shall be reviewed for reapproval at the
end of the period.

Section 6. Facility Design. (1) Each center shall have two (2)
separate entrances: a prisoner entrance and a service entrance.
The department may permit these entrances to be combined.
(a) Prisoners' entry. The purpose of this entrance shall be to
provide secure and controlled access to the center for prisoners.
(b) Service entrance. The purpose of this entrance shall be to
provide access to service vehicles and delivery trucks with mini-
imum security risks. It shall [should] be located in close proximity
to storage rooms and the kitchen area.
(2) Each exit in the security area shall be secured.
(3) Security area. The area shall enclose those facilities and
services required for or used by prisoners. It shall contain the fol-
lowing function areas:
(a) Control area. This area shall be located in close proximity
to the prisoner entrance and shall be used to monitor the move-
ment of prisoners in and out of the facility.
(b) Visitation. Adequate space shall be made available for contact
visits between prisoners and families. Tables and chairs
shall be provided. Bathroom facilities shall be available to serve
this area.
(c) Multipurpose room. The purpose of this area is to provide
space for assembly of prisoners for specific program activities.
Adequate furnishings shall be provided.
(d) Conference area. The purpose of this space is to provide
space for confidential conferences between prisoners and lawyers,
counselors, clergy, etc. A table and chairs shall be provided.
(e) Living areas.
1. Each sleeping room shall provide a minimum of forty (40)
[fifty (50)] square feet per prisoner. [No] More than forty (40) [thirty-
six (36)] prisoners shall not be placed in a single sleeping room,
with the exception of a direct supervision area as outlined in 601
KAR Chapter 3.
2. Each prisoner shall be provided in the sleeping room, at a
minimum: bed, mattress and pillow, supply of bed linen, chair, and
closet or locker space for the storage of personal items.
3. A sleeping area shall have lighting of at least twenty (20)
foot-candles in the reading and grooming area, with a nighttime
Capability of providing five (5) foot-candles of light.
4. The facility shall have one (1) toilet for every ten (10) [eight
(8)] prisoners, one (1) washbasin for every ten (10) [eight (8)] pris-
oners and a shower for every twenty (20) [six (6)] prisoners.
The (1) urinal may be substituted for each commode in male areas,
but the commodes shall not be reduced to less than one-half (1/2)
the number required.
5. Phone facilities shall be available for prisoner use.
6. Each occupied area shall have temperature ranges within
comfort zones, sixty-five (65) degree Fahrenheit to eighty-five (85)
degree Fahrenheit.
7. Each occupied area shall have ventilation to meet air exchange as required in the Kentucky Building Code, 815 KAR 7:120 [108].

(f) Kitchen. The purpose of this area is to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the center. Design features shall include compliance with standards for the Retail Food Code, 502 KAR 45:005. If food is not prepared in the facility, a food distribution area shall be substituted.

(g) Laundry facilities. Laundry facilities shall be available.

(h) Furnishings. Center furnishings shall be noncombustible and nontoxic as approved by the department.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 7:060. Security; control.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes security procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each jailer shall develop a written policy and procedure governing the security aspects of the center's operation.

(2) The department shall provide technical assistance to the jailer in formulating written policy and procedure.

(3) The policies and procedures shall include:
(a) Prisoner rules and regulations;
(b) Staffing;
(c) Searches of prisoner and of secure areas;
(d) Visitation;
(e) Key and weapon control;
(f) Prisoner head counts;
(g) Movement of prisoners;
(h) Emergency situations;
(i) Center schedule; and
(j) Administering medication.

Section 2. Prisoner Supervision. (1) Center personnel shall conduct rounds of the center at least every sixty (60) minutes.

(2) There shall be at least three (3) documented prisoner counts every twenty-four (24) hours during which each prisoner's physical presence, by show of skin or by movement, shall be observed or his location accounted for. At least one (1) count shall be conducted per shift.

(3) Males and females shall be housed separately.

Section 3. Security Procedures. (1) Each jailer shall establish a procedure for weekly inspection, for contraband and physical security, of each area accessible to any prisoner.

(a) Isolated security spot checks for contraband shall be conducted daily.

(b) The center rules, as specified in Section 1(3)(a) of this administrative regulation, shall contain a clear definition of each item permitted in the center. All other items shall be considered contraband.

(c) There shall be a written procedure for reporting security irregularities and for confiscating contraband.

(d) A weapon, ammunition, chemical agent, related security equipment, or an object which may be used as a weapon shall not be permitted in the security area unless authorized by the jailer. A firearm shall not be permitted in the security perimeter unless authorized by the jailer, under emergency circumstances.

(e) All weapons, ammunition, chemical agents, or related security equipment, when not being carried or used, as authorized by the jailer, shall be stored in an arsenal, vault, or other secure room under lock.

(a) The weapons storage area shall be inaccessible to unauthorized persons.

(b) There shall be a written procedure for issuing and accounting for all weapons.

(4) Security devices and safety equipment shall be inspected each quarter (monthly) to ensure they are maintained in proper working order.

(e) Tools and toxic, corrosive, or flammable substances, and other potentially dangerous supplies and equipment shall be stored in a secure, locked area.

(f) A prisoner shall use hazardous tools, supplies, or equipment only under the direct supervision of center personnel and shall be provided with proper safety equipment.

(g) A prisoner may be assigned the responsibility of providing prisoner services, including providing meals under the direct supervision of staff.

(h) A prisoner shall not:
(a) Permitted to perform or assist in a security duty; or
(b) Assigned to a position of authority over another prisoner.

(i) A prisoner and his belongings shall be searched, in accordance with the guidelines established in 501 KAR 7:120, if whenever entering the security perimeter.

(j) Written procedures shall be developed for transporting outside the center.

(1) Each center shall have key control procedures.

Section 4. Daily Center Log; Special Reports. A daily center log shall be kept current and shall reflect significant occurrences within the center. Special reports shall include:

(1) Use of force;
(2) Disciplinary action;
(3) Medical or mental health treatment;
(4) Feeding schedule and menus;
(5) Extraordinary occurrences:
(a) Fire;
(b) Assault;
(c) Suicide or attempted suicide that constitutes a serious health situation;
(d) Escape or attempted escape;
(e) Prisoner vandalism;
(f) Destruction of center property;
(g) Flooding of plumbing fixtures;
(h) Staff roster for each shift;
(i) Visitors' log; or
(j) Fire emergency planning sessions, pursuant to 501 KAR 7:070, Section 1(1).

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Jail Standards Commission, Commissioner, Department of Corrections
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.
VOLUME 31, NUMBER 11 – May 1, 2005

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 7:070. Safety; emergency procedures.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that [which] elect to house state prisoners. This administrative regulation establishes safety and emergency procedures to be followed in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall work with its local fire department to develop [have] a written policy and procedure which shall specify fire prevention administrative regulations and practices to ensure the safety of prisoners, visitors, and staff. The policy shall include:
   (a) Provision for a fire emergency planning session for staff at least quarterly;
   (b) Written documentation of the fire planning session;
   (c) A fire safety inspection by the department at least once a year;
   (d) Inspection and testing of fire protection equipment by a qualified person at least annually with visual inspections by staff monthly;
   (e) Smoking restrictions and regulations; and
   (f) An evacuation plan coordinated with local fire officials. This plan shall be approved by the Department of Corrections.

(2) Each center shall have written policy and procedures for emergency situations including:
   (a) Escape;
   (b) Hostage taking;
   (c) Riot;
   (d) Food poisoning;
   (e) Civil disturbance in the community;
   (f) Natural disaster;
   (g) Suicide; and
   (h) Other death and disorder.

Section 2. Physical Plant. (1) The center shall comply with the Kentucky Building Code, incorporated by reference in 815 KAR 7:120 [106]. An existing center for which approval has been granted may continue without change, except if [when] a significant alteration [an alteration], addition or change of occupancy occurs.

(2) Each exit shall be:
   (a) Distinctly and permanently marked;
   (b) Visible at all times;
   (c) Kept clear; and
   (d) Maintained in usable condition.

(3) Each center shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(4) In each area where a prisoner may be confined, there shall be an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.

(5) Each center shall have an approved fire alarm and smoke detection system. Each [direct supervision] area shall have an approved fire-suppression system.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: February 14, 2005
FILED WITH LRC: February 15, 2005 at noon
CONTACT PERSON: Amy Barker, Justice and Public Safety

Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

VOLUME 31, NUMBER 11 – May 1, 2005

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 7:080. Sanitation; hygiene.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes procedures for proper sanitation and hygiene in restricted custody [community] centers.

Section 1. Procedures. (1) The jailer shall provide for:
   (a) The control of vermin and pests; and
   (b) Both solid and liquid waste disposal.

(2) The jailer shall have a written preventative maintenance plan which includes schedules for:
   (a) Cleaning various specified locations and items in the center;
   (b) Inspections by the jailer;
   (c) Trash and garbage removal; and
   (d) Periodic inspection and maintenance of specified mechanical equipment.

(3) The center shall have fresh, purified air circulating within each prisoner living and [of] activity area.

(4) The center shall furnish clean, sanitized bedding to prisoners, including:
   (a) One (1) penal mattress;
   (b) One (1) mattress cover;
   (c) One (1) blanket, when conditions require;
   (d) Two (2) sheets [(d) One (1) sheet];
   (e) One (1) pillow, if not part of the mattress; and
   (f) One (1) pillowcase, if applicable.

(5) Prisoner bedding shall be cleaned on a regular basis according to the following schedule:
   (a) Sheets, pillowcases, and mattress cover shall be cleaned at least once per week;
   (b) Blankets shall be cleaned upon reissue or quarterly, whichever is sooner;
   (c) Mattresses and pillows shall be cleaned quarterly.

(6) Each prisoner shall be issued a clean towel. Towels shall be laundered weekly, or more as needed [every fourth day].

(7) Provisions shall be made for laundering prisoner clothing at least once a week.

(8) Floors, toilets, and sinks shall be washed daily or more often as necessary.

(9) Showers shall be cleaned on at least a weekly basis. Prisoners shall be issued or permitted to obtain the following hygienic items:
   1. [a] Soap;
   2. [b] Toothbrush;
   3. [c] Toothpaste;
   4. [d] Toilet paper; and
   5. [e] Female sanitary supplies, if [where] applicable.

(10) A indigent prisoner shall be furnished these items by the center.

(11) Hair cutting services or sanitized hair cutting equipment shall be available to all prisoners.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 7:120. Admission; searches and release.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS
441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that elect to house state prisoners. This administrative regulation establishes admission, search, and release procedures for restricted custody centers.

Section 1. Policy and Procedure. Each center shall develop written admission, orientation, and release procedures to be included in the center's policy and procedure manual.

Section 2. Admission. (1) The center staff shall ensure that each prisoner is transferred under proper legal authority by a duly authorized officer.
(2) Prisoner records shall be delivered to the center at the time of admission. The admitting officer shall make certain that all required forms are complete and that information is current.

Section 3. Searches. (1) The center staff shall conduct a search of each prisoner and his possessions upon admission.
(a) Each prisoner shall be searched for contraband in a manner as responsible staff reasonably determine is necessary to protect the safety of fellow prisoners, staff and institutional security. The search shall be conducted in a private area and in a manner which protects the prisoner's dignity to the extent possible in that particular center.
(b) A prisoner may be strip searched only on reasonable suspicion that is based upon the existence of objective information that may predict the likelihood of the presence of a weapon, drugs, or other item of contraband concealed on a particular prisoner. Reasonable suspicion shall be based upon one (1) or more of the following:
1. A current offense involving felony violence, drug charges, or fugitive status;
2. A criminal history of offenses involving the use of a weapon or the possession of contraband;
3. Institutional behavior, reliable information, or history that indicates possession or manufacturing of contraband, the refusal to submit to a clothed pat down search, or a clothed pat down search reveals the possession of contraband;
4. Contact with the public by a contact visit, court appearance that takes place in an area to which the public may have access, or after transport from or through an area to which the public may have access; or
5. The court has ordered commitment to custody after arraignment, conviction, sentencing, or other court appearance and the prisoner was not in custody prior to the court appearance.
(c) The jailer shall require that a strip search or body cavity search shall be documented. Documentation shall include:
1. Date and time of search;
2. Name of prisoner;
3. Name of person conducting search;
4. Type of search; and
5. Result of search.
(d) A strip search shall be conducted by a staff person of the same sex as the prisoner, and in a private area.
(e) Probing of body cavities shall:
1. Not be done unless there is reasonable suspicion to believe that the prisoner is carrying contraband in a body cavity; and
2. Be conducted in a private location, under sanitary conditions, by a licensed medical professional, acting within his statutory scope of practice.
(3) Each center shall develop written policies and procedures, specifying the personal property that a prisoner may retain in his possession.
(a) Cash or personal property taken from a prisoner upon admission shall be listed by complete description on a receipt form, and securely stored pending the prisoner's release. The receipt shall be signed by the receiving officer and the prisoner.
(b) Personal property released to a third party shall have the prisoner's signature of approval and the signature receipt of the third party.

Section 4. Orientation. (1) The prisoner shall sign to indicate if he has received an oral and a written copy of the prisoner orientation information. This document shall be placed in the prisoner's file [As soon after assignment as possible an oral or written orientation shall be made available to each prisoner]. Special assistance shall be given to any illiterate or non-English speaking prisoner.
(2) The orientation shall provide the prisoner with information regarding his confinement, including the following:
(a) Information pertaining to rising and retiring, meals, mail procedures, work assignments, telephone privileges, visiting, correspondence, commissary, medical care, and other matters related to the conditions of the prisoner's confinement;
(b) Rules of prisoner conduct established pursuant to 501 KAR 7:060, Section 1(3);
(c) Disciplinary procedures;
(d) Information regarding work, educational and vocational training, counseling, and other social service programs;
(e) Procedures for making a request or registering a complaint with the center's staff, judicial office, or department personnel. Prisoners shall follow the grievance procedure and attach copies of the grievance forms if [when] requesting a review by the Department of Corrections.

Section 5. Release. (1) Written legal authorization shall be required prior to the release or removal of a prisoner from confinement.
(2) When any prisoner is released or removed for any legal purpose to the custody of another, the identity of the receiving authority shall be verified.
(3) A written record shall be kept of the time, purpose, date, and authority for release or removal from confinement, and into whose custody the prisoner is released or removed.
(4) Prior to the release or removal of a prisoner, the receiving authority shall sign an authorized release form.
(5) Before jail personnel [the jailer] releases a prisoner to an out-of-state jurisdiction, jail personnel [he] shall consult with the appropriate prosecutorial [processing] office in the county.
(6) Property, not legally confiscated or retained, received from the prisoner upon admission shall be returned to the prisoner at the time of release.
(7) Each prisoner shall sign a receipt for property returned at the time of release.
(8) A complaint regarding property returned shall be submitted in writing with specific details within twenty-four (24) hours from the time of release.

Section 6. Transfer. (1) The jailer shall develop policy and procedure to determine the conditions under which a prisoner becomes ineligible to remain at the restricted custody facility and shall be transferred to the secure jail.
(2) A prisoner transferred to the secure jail shall be accompanied by:
(a) An incident report specifying the reasons for the transfer;
(b) The prisoner's record; and
(c) The prisoner's personal property.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).
JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)

501 KAR 7:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.055
STATUTORY AUTHORITY: KRS 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails, the jail to house state prisoners. This administrative regulation establishes procedures to ensure the rights of prisoners in restricted custody centers.

Section 1. Policy and Procedure. (1) Each center shall have a written statement of prisoner rights which shall address:
(a) Access to court;
(b) Access to attorney;
(c) Mail;
(d) Telephone;
(e) Grievance procedure;
(f) Search and seizure;
(g) Disciplinary procedure;
(h) Racial segregation;
(i) Medical care;
(j) Counseling, if available; and
(k) Religion.
(2) The statement of prisoner rights shall be posted in a conspicuous place in the booking and living areas of the center and a copy shall be made available to the prisoner as soon after assignment as possible, and upon admission, the prisoners shall sign that they have received a written copy of the prisoner's rights.
(3) [23] The jailer shall not prohibit a prisoner's right of access to the judicial process.
(4) [24] The jailer shall ensure the right of each prisoner to have confidential access to his attorney and his authorized representative.
(5) [25] The jailer shall have a written policy that defines the center's visitation rules and administrative regulations, which shall include:
(a) A schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend;
(b) At least one (1) visit per week per prisoner shall be allowed except if [when] a prisoner has been assessed a disciplinary penalty for an infraction of rules governing visitation;
(c) A visit shall not be less than fifteen (15) minutes;
(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit; and [or]
(e) Children, if [when] accompanied by an adult, shall be permitted to visit a prisoner.
(6) [26] Attorneys, clergy, and medical personnel shall be permitted to visit a prisoner at reasonable hours other than during regularly scheduled visiting hours and shall not count as an allotted visit.
(7) [27] Each visitor shall register and show proper photo identification before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (6) [24] of this section or established in subsection (8) [25] of this section.
(8) [28] A prisoner shall not be restricted in regard to whom he may have as a visitor, unless the jailer determines to exclude the visitor on the basis of one (1) or more of the following conditions:
(a) The visitor:
1. Represents a clear and present danger to security;
2. Has a past history of disruptive conduct at the center;
3. Is under the influence of alcohol or drugs;
4. Refuses to submit to a search; or
5. Refuses to show proper identification; or
(b) The prisoner refuses the visit.
[8] [29] Except for visitors pursuant to subsection (6) of this section, the jail staff may monitor and record visitor and inmate conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting area [visitor shall not listen to a visitor's conversation but may observe the visitation] or security reasons.

Section 2. Mail. (1) The jailer shall have a written policy and procedure for receiving and sending mail that:
(a) Protects prisoners' personal rights; and
(b) Provides for security practices consistent with the operation of the center.
(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate any state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. The jailer may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer discretion to grant the privilege.
(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner.

Section 3. Telephone. (1) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.
(2) [Telephone calls shall not be routinely monitored.] If calls are monitored, the prisoner shall be notified.
(3) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion. (1) Each prisoner shall be:
(a) Granted the right to practice his religion within limits necessary to maintain institutional order and security; and
(b) Afforded an opportunity to participate in religious services and receive religious counseling within the center.
(2) A prisoner shall not be required to attend or participate in any religious service or discussion.

Section 5. Access to Programs. The jailer shall ensure each prisoner equal access to programs and services, if [provided] the security and order of the center are not jeopardized.

Section 6. Grievance Procedure. The jailer shall have a written prisoner grievance procedure. The procedures shall include provisions for:
(1) A response to each written grievance shall be made within ten (10) days [Response shall be within ten (10) days within a reasonable time];
(2) Equal access for each prisoner;
(3) Guarantee against reprisal; and
(4) Resolving legitimate complaints.

Section 7. Disciplinary Rights. Each center shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(3) and 13A.220(6)(a).
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JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(As Amended at ARRS, April 12, 2005)


RELATES TO: KRS 198B.650-198B.689, 217.280-217.390, 441.055

STATUTORY AUTHORITY: KRS 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum health and life safety standards for jails which do not elect to house state prisoners. This administrative regulation sets forth procedures to provide protection for basic health and life safety in jails that [which] do not house state prisoners.

Section 1. Definitions. (1) "Life Safety Jail" means county jails and correctional facilities, including correctional facilities defined in KRS 441.005 [678.020], operated by and under the supervision of any county, regional jail authority, city or urban county government that [which] does not house state prisoners as defined by KRS 532.100. [There shall be no new or reopening of any life safety jails.]

(2) "Medical authority" means the person or persons licensed and certified to provide medical care to prisoners in the jail's custody. [Jail].

Section 2. Staffing. (1) Each jail shall provide a minimum of two (2) staff members, communication staff excluded, per twenty-four (24) hour awake supervision for all prisoners. If requested by the jailer or jailer's staff, the Department of Corrections may conduct a staffing analysis.

(2) Each jail shall be required to provide the Department of Corrections with a weekly population update that includes the number of state prisoners, federal prisoners, and county prisoners.

(3) If a female prisoner is lodged in the jail, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision.

(4) Qualifications. Security employees shall be at least twenty-one (21) years of age.


(6) Males and females shall be housed separately.

Section 3. Physical Plant. (1) Square footage living space requirement for jails shall be the same as required in 501 KAR 3:050 for jails which elect to house state prisoners.

(2) All furnishings in the jail shall be noncombustible and nontoxic as approved by the Department of Corrections.

(3) Kitchen. The purpose of this area shall be to provide sufficient space and equipment for preparing meals for the maximum rated capacity of the jail. Design features shall include:

(a) Compliance with standards of the State Food Service Code, 902 KAR 45:005.

(b) Commercial type stoves and refrigeration units.

(c) Walls, floors, and doors (sealing) shall be approved fire rated masonry, concrete or steel construction.

(4) Gauges, indicators, and alarms shall be located in an area monitored by staff.

(5) The jail shall provide ventilation to meet air exchange as required in the state health codes, KRS 198B.650 to 198B.689, 503 KAR 2:317, and 902 KAR 45:005.

(6) Electrical outlets if provided shall be ground-faulted or have ground-fault circuit breakers.

(7) All tools, toxic, corrosive, and flammable substances, and other potentially dangerous supplies and equipment shall be stored in a locked area which shall be secure.

(8) The jail shall have a procedure for immediate reporting and repairing any broken or malfunctioning key or lock.

(9) A set of duplicate keys shall be maintained in a separate, secure place.

(10) Each jail shall comply with the Kentucky Building Code, 815 KAR 7:120.

Section 4. Fire Safety. (1) Each jail shall have a written policy and procedure which specifies fire prevention regulations and practices to ensure the safety of prisoners, visitors, and staff. These shall include but not be limited to:

(a) Provision for fire emergency planning sessions for staff at least quarterly.

(b) Written documentation of fire planning sessions.

(c) A fire safety inspection by the Department of Corrections at least once a year.

(d) Inspection and testing of fire protection equipment by qualified persons at least annually with visual inspections by staff monthly.

(e) Smoking restrictions and regulations.

(f) Written evacuation plan coordinated with local fire officials.

(2) [Each jail shall comply with the NFPA Life Safety Code (1981 Edition).]

(3) Each jail shall have exits distinctly and permanently marked, visible at all times, kept clear, and maintained in usable condition.

(4) Each jail shall have equipment necessary to maintain essential lights, power, and communications in an emergency situation.

(5) In all areas where a prisoner may be confined, each jail shall be provided with an emergency smoke evacuation system activated by smoke detectors and operated by emergency power.

(6) Each jail shall have an approved fire alarm and smoke detection system.

Section 5. Sanitation; Hygiene. (1) The jailer shall provide for the control of vermin and pests.

(2) The jail shall provide for both solid and liquid waste disposal.

(3) The jail shall have fresh [and purified] air circulating within prisoner living and activity areas.

(4) All prisoners shall be provided with hot and cold running water in showers and lavatories.

Section 6. Medical Services. (1) Deputy jailers and correctional officers shall have current training in standard first aid and CPR, as offered by the American Red Cross and the 'office of Corrections Training Department of Corrections, Division of Corrections Training.'

(2) The jail shall have first aid kits available at all times.

(3) A health status (including current medications, known allergies, diet or other special medical needs) shall be completed on each prisoner during admission.

(4) Each prisoner shall be afforded access to necessary medical care as in KRS 441.045.


(2) The jail shall provide prisoners with a diet containing 2400 calories daily and jail menus shall be approved annually by a nutritionist or dietitian.

(3) Prisoners shall receive three (3) meals per day, one (1) of which shall be hot. More than fourteen (14) hours shall not elapse between any two (2) meals.

(4) The jailer shall provide for medical diets if prescribed by a medical authority.

(5) The jailer shall provide for religious diets.

(6) The jailer shall maintain accurate records of all meals served.

(7) Food shall not be used for disciplinary or reward purposes.

(8) A staff member shall directly supervise all food prepared within the jail.
(9) All food shall be served under the direct supervision of a staff member.
(10) The jail shall have sufficient cold and dry food storage facilities.
(11) The jailer or his designee shall inspect the food service area daily.
(12) Food shall not be prepared in prisoner living areas except Canteen food items purchased by prisoners may be stored and prepared in amounts that do not pose a threat to the health or security of the institution.

[Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Kentucky Building Code--2002 edition," and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Local Facilities, Department of Corrections, 275 East Main Street, PO Box 2400, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 4:30 p.m.]

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
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JUSTICE AND PUBLIC SAFETY
Department of State Police
Division of Driver's Testing
(As Amended at APRS, April 12, 2005)

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: 49 U.S.C. § 5103a, and 49 C.F.R. Part 1572
STATUTORY AUTHORITY: KRS 281A.040
NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS 281A.040. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining for the first time a hazardous materials endorsement for a commercial driver's license no later than January 31, 2005. On or after May 31, 2005, this requirement shall further apply to all persons seeking to renew a hazardous materials endorsement for a commercial driver's license. This administrative or [emergency] regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions. (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5 [means commercial driver's license as defined in 49 C.F.R. 383.6].
(2) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.3.
(3) "DOT" means the federal Department of Transportation.
(4) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.
(5) "Fingerprint centers" means regional offices of Kentucky State Police's Division of Driver's Testing established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).
(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.3.
(8) "KDOT" means the Kentucky Department of Transportation.
(9) "KSP" means the Kentucky State Police.
(10) "Proper identification" means:
(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or
(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee or refugee status.
(11) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME Submitted on or After January 31, 2005. (1) An applicant applying for a hazardous materials endorsement on or after January 31, 2005, shall first obtain a CDL prior to requesting the security threat assessment from the TSA. In order to receive the security threat assessment, the applicant shall complete a "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, [background-information-sheet] containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.
(2) To begin the process, the applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.
(3) An applicant shall bring proper identification, their DOT medical card, a completed "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, [biographical information-sheet] and a certified check of $115 for the fingerprint fee.
(4) An applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.
(5) If TSA informs the commonwealth of a finding of Determination of No Security Threat, [as this term is defined in 49 C.F.R. 1572.3] then the applicant shall be notified and may proceed to the circuit clerk's office to take the knowledge test required to qualify for the HME.
(6) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the applicant shall not be issued a HME. The applicant shall be [5] entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the applicant receives a Final Determination of Security Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.
(7) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME Submitted On or After May 31, 2005. (1) KDOT [KYO DOT] shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.
(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.
(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for Hazardous Materials Endorsement," OMB No. 1652-0027, [background information sheet] containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.
(4) A renewal applicant shall bring to their appointment proper identification, their DOT medical card, a completed "Transporta-
tion Security Administration Application for Hazardous Materials Endorsement,” OMB No. 1652-0027, [biographical information sheet] and a certified check of $115 for the fingerprint fee.

(5) A renewal applicant shall be fingerprinted by KSP. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

(6) If the commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the commonwealth may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

(7) If TSA informs the commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified and may proceed to the circuit court's office to take the knowledge test required to qualify for the HME.

(8) If TSA informs the commonwealth of a finding of Initial Determination of Security Threat, the renewal applicant shall not be issued a HME. The renewal applicant is entitled to appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1572.141. Following appeal, if the renewal applicant receives a Final Determination of Threat, applicant may seek a waiver from TSA in accordance with procedures set forth in 49 C.F.R. 1572.143.

(9) Within fifteen (15) days after the TSA has notified the commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Threat, KDOT shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 4. Transfer Applications For HME Submitted On or After May 31, 2005. (1) In accordance with 49 C.F.R., 1572.13(g), an applicant who applies to transfer an existing HME from another state to the commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

Section 5. Regional Fingerprint Centers. (1) KSP shall establish eight (8) regional fingerprinting centers in the commonwealth. These centers shall be located in the following cities:

(2) Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;

(3) Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;

(4) Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;

(5) Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;

(6) Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;

(7) Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;

(8) London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743, and

(9) Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK MILLER, Commissioner
STEPHEN B. PENCE, Lt. Governor, Secretary
APPROVED BY AGENCY: January 12, 2005
FILED WITH LRC: January 26, 2005 at 1 p.m.
CONTACT PERSON: Roger Wright, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6345, fax (502) 573-1636.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at ARRS, April 12, 2005)

702 KAR 3:030. Insurance requirements.

RELATES: KRS 160.105
STATUTORY AUTHORITY: KRS 156.070, 160.105
NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.105
requires [directs] the Kentucky [State] Board of [for Elementary and Secondary] Education to require by administrative regulation that each school district provide for fire and extended insurance coverage on nonsurplus buildings, at not greater than replacement cost but allowing for coinsurance and deductible features. This administrative regulation establishes requirements for the [implements that function by providing for a] level of insurance coverage needed for [on] school district buildings and structures [sufficient to protect both the local school districts and any school revenue bond holders, as their interests may appear].

Section 1. (1) A [Each] local board of education shall procure [submit to the chief state school officer for his approval, not less than sixty (60) days nor more than 120 days prior to the date of awarding] insurance coverage [a schedule of values] which reflects the estimated replacement cost, actual cash values, and the amount of fire and extended insurance coverage provided for each building and its contents owned by the local board of education which is not surplus to its needs as shown by the approved facilities plan.

(2) A [Each such] building and its contents shall be insured for an amount equal to 100 percent of the replacement cost [thereof] as shown on the schedule of values, and each policy covering the [such] buildings and contents shall provide an agreed amount endorsement.

(3) The replacement cost of the building shall include the increased cost of construction brought about by code changes that have occurred since the original structure was built and which would be required to be incorporated within the rebuilt structure.

(4) Despite the required insuring of individual buildings and contents at 100 percent of replacement cost, a blanket limitation on an insurance carrier's liability per occurrence may be procured [approved by the chief state school officer if:

(a) An individual district’s schedule of values exceeds $100,000,000; and

(b) The blanket limitation equals at least $100,000,000 and, in addition, at least fifty (50) percent of total replacement costs as reflected by the approved schedule of values].

Section 2. Insurance on property specified in Section 1 of this administrative regulation shall be provided by carriers licensed to do business in the State of Kentucky and shall have features that provide for:

(1) A minimum of eighty (80) percent coinsurance;[1]

(2) A per occurrence deductible on all perils not to exceed five (5) percent of the prior year's capital outlay allotment or $10,000, whichever amount is smaller;[2] and

(3) A replacement cost endorsement.

Section 3. A building [building] requiring insurance and containing a steam boiler [boilers] shall have boiler and machinery coverage having a limit of liability equal to the total value of the real and personal property in the building in which the steam boiler is located.

Section 4. A school district [districts] may cover property in a self-insurance pool providing coverage at least equal to the standard of coverage specified in Sections 2 and 3 of this administrative regulation. [Such] A self-insurance pool shall be adequately reinsured by a carrier approved to do business in the state of
Kentucky and shall provide facilities for insuring all of the property of an individual district to which this administrative regulation applies.

Section 5. If [in the event] a school building cannot be insured on a replacement cost basis, the policy insuring the building shall carry such agreed amount endorsement, and a certification signed by the local superintendent and board chairman shall be attached to the policy stating that it would not be fiscally responsible to provide replacement cost coverage for the building being insured.

Section 6. Insurance coverage provided for in Sections 2 and 3 of this administrative regulation shall be obtained by local school districts by bids [signed and addressed for school business provided by the chief state school officer] after having advertised for bids, if [where] bids are required by KRS Chapter 45A or 424 [as applicable].

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 158.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: February 10, 2005
FILED WITH LRC: February 10, 2005 at 11 a.m.
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.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at ARRS, April 12, 2005)

702 KAR 5:110. Vocational pupils, reimbursement for.

RELATES TO: KRS [156.034.] 157.370
STATUTORY AUTHORITY: KRS 156.070, [157.320,]
157.370(8)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.034. requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 157.370(8) requires a local board of education to be reimbursed separately [from local funds] for vocational education Excellence-in-Kentucky cost of transporting pupils from a school to a vocational-technical school or to a vocational education center, and requires the [according to] Board of Education to promulgate an administrative regulation establishing the reimbursement amount [State Board for Elementary and Secondary Education] [administrative regulations]. This administrative regulation establishes the terms under which reimbursement requirements and limitations for [will be paid to] those districts that [will transport] [their] secondary school pupils [and establishes the reimbursement limits].

Section 1. [Any] local district may provide bus transportation for the district's secondary school pupils from their parent school to a vocational school [e.g., a state vocational-technical school, an area vocational education center, or to a vocational training site] where an integral part of the basic vocational instructional program is being provided. [For the purposes of these administrative regulations, the place or site where the pupil receives basic vocational training shall be referred to as a vocational school.]

Section 2. An application showing anticipated transportation of [All applications to transport] pupils to a vocational school for which reimbursement is to be claimed shall be submitted to the Office of District Support Services [Division of Pupil Transportation] for approval on or before October 1 of the current school year.

Section 3. A request [Requests] for reimbursement for transportation to a vocational school shall be the responsibility of the district providing the transportation.

Section 4. A request [Requests] for reimbursement for actual transportation to a vocational school shall be made on an annual [a monthly] basis on or before June 30 of the current school year to the Office of District Support Services [Division of Pupil Transportation in the Office of School Administration and Finance] in the Department of Education.

Section 5. Tentative funding in the current year shall be based upon information submitted on district applications. Any necessary adjustments shall be made in the following year based on the actual transportation provided.

Section 6. A local district [districts] that transports [transport] pupils to a vocational school on buses owned and operated by the district shall be reimbursed for these expenditures as follows [and to the following extent]:

1. Bus mileage at a rate not to exceed the average cost per bus mile for county school districts, exclusive of driver's cost, as calculated by the Office of District Support Services [Division of Pupil Transportation] for the previous school year; and
2. The vocational school bus driver's cost at an hourly rate not to exceed the hourly rate paid by the district to a driver in the district's regular transportation program with similar qualifications.

Section 7. [6.] If a district's pupils are transported to a vocational school over a toll road as the nearest or best route, either on a board-owned bus or a bus contracted to the board, the district shall be reimbursed for the toll road fee in addition to mileage and driver's cost.

Section 8. [1.] [7.] A district that contracts for the transportation of its pupils to a vocational school shall be reimbursed an amount not to exceed the total amount that would result if:
(a) [when] The vocational school bus mileage is multiplied by the average cost per bus mile for county districts exclusive of driver's cost; and
(b) [and when] the driver's total hours are multiplied by the average hourly rate paid by county school districts plus necessary toll road fees.

2. The average mileage cost and average hourly rate shall be those calculated by the Office of District Support Services [Division of Pupil Transportation] for the previous school year.

Section 9. [1.] [8.] Bus mileage shall be calculated from the parent school to the vocational school over the nearest and best route. [If [When] the same bus is used to transport pupils to a vocational school from more than one (1) school within the same district, bus mileage shall be calculated from the school located farthest from the vocational school over the nearest and best route as the bus serves the other schools on route to the vocational school.

2. A bus round trip shall be considered the transportation of the student to and from a vocational school. A bus driver transporting students on a bus from a high school to a vocational school and returning back without the students to the high school shall be considered to have made half of a round trip. Similarly, a bus driver departing from the high school without the students, going to the vocational school and returning back to the high school with the students shall be considered to have made half of a round trip.

Section 10. [9.] The total hours of driver's pay per day that will be reimbursed for transporting pupils to a vocational school shall be calculated on the basis of what the driver does while the bus is in class at the vocational school as follows [and shall be done by one (`1') of these methods]:

1. If the driver waits at the vocational school for the full time that the pupils are in class, the driver's time shall start when the bus leaves the parent school farthest from which pupils are transported to the vocational school and shall stop when the pupils are
The driver unloads the pupils at the vocational school, then takes the bus to another location and returns to pick up the pupils when the classes are finished, the first half of the drivers time shall start when the bus leaves the parent school furthest from the vocational school and ends when the driver reaches the point where the bus is parked until time to make the bus trip to the vocational school to return the pupils to their parent school. The second half of the drivers time shall start when the bus leaves the point where the bus was parked and ends when the bus reaches the parent school furthest from the vocational school; and [1]

(3) If [not as it is] possible or practical, the district shall pay the bus driver by the method that results in the least cost when the drivers time and the required bus mileage are considered in combination.

Section 11. [10] The driver of the bus that transports pupils to a vocational school shall meet the same requirements as the districts bus drivers that transport pupils to the districts public schools.

Section 12. A [] school district [districts] shall be reimbursed for the cost of vocational school transportation for the actual number of days that pupils were transported to the vocational school up to a maximum of 175 days per school year.

Section 13. [12] One (1) district may make a contract with another district to transport the other districts pupils to a vocational school on the same bus with the transporting district pupils or on a separate bus. [Any such contract shall be made subject to approval by the Division of Pupil Transportation.]

Section 14. [13] If [When] one (1) district contracts to provide a bus or buses to transport another district's pupils to a vocational school, the district providing the bus or buses shall claim additional reimbursement only for the extra bus miles required and the extra hours of bus driver time required to provide this service for the other district.

Section 15. [14] A district shall make maximum use of the bus that transports pupils to a vocational school through planning and routing. The use of more than one (1) bus for transporting pupils from any school or group of schools to a vocational school shall be approved only if [when] the length of time required for one (1) bus to pick up and transport the pupils would be impractical or [when] the number of pupils on one (1) bus would exceed seating capacity.

Section 16. A district [] District shall not be reimbursed for the transportation of vocational school pupils on field trips, excursions, competitions, or recreational trips.

Section 17. A district [] District shall not be reimbursed for the vocational transportation from the parent school to the vocational school if [when] the vocational school is on the same grounds or on adjacent grounds to the parent school or within one-half (1/2) mile of the parent school.

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

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: February 10, 2005
FILED WITH LRC: February 10, 2005 at 11 a.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Meri Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
ment. A school professional development program shall be incor-
porated into the school improvement plan and made public prior to
the implementation of the school program. The local district pro-
gram shall be incorporated into the district improvement plan and
posted to the local district website prior to the imple-
mentation of the program. The local district and school plans shall be
submitted to the Department of Education prior to the imple-
mentation of the plan.

Section 3. Each school and local district improvement plan
shall meet the following six (6) standards related to the profes-
sional development program: shall have on file with the Depart-
ment of Education a professional development plan that meets the
following six (6) standards:
(1) There is a clear statement of the school or district mission;
(2) There is evidence of representation of all persons affected
by the professional development program;
(3) Application of needs assessment analysis is evident;
(4) Professional development objectives are focused on the
school or district mission and derived from needs assessment;
(5) The professional development program and implementation
strategies are designed to support school or district goals and ob-
jectives; and
(6) A process for evaluating professional development experi-
ences for their [file] impact on student learning and improving pro-
fessional development initiatives is incorporated in the plan.

Section 4. (1) The school or district improvement plan [profes-
sional-development-] plan shall address any instructional improve-
ment or training needs that are in accordance with the goals as
established in KRS 158.6451.
(2) High-quality professional development experiences [Pro-
fessional development activities] shall:
(a) Be related to teachers' instructional assignments and ad-
ministrators' professional responsibilities. Experiences [Activities]
shall support the local school's instructional improvement goals; and
(b) Be aligned with the school or district improvement plan or
individual professional growth plans of teachers [Objectives iden-
tified in the professional development plan].
(3) Experiences [Activities] for professional development credit
of classroom teachers shall not supplant any of the six (6) hour
instructional day.
(4) A district may report flexible professional development ex-
periences [activities] on unpaid, noncontact snow days. This shall
require a district calendar change and the change shall be reported
to the Department of Education.
(5) Professional development experiences that relate to an
individual professional growth plan may be used to satisfy the re-
quirements for certification or renewal options as established by
the Kentucky Education Professional Standards Board in Title 16
KAR [704-KAR-24].
(6) (a) Professional development grant dollars may be used for
college or graduate course tuition reimbursement for a teacher in
specific academic subject content areas in math, science, En-
lish/language arts, social studies, arts and humanities for which the
teacher [he] is assigned to teach.
(b) The use of professional development funds for this purpose
shall be specified in the district improvement [professional devel-
oment] plan approved by the school board or the school plan
approved by the school council as to funds under its control.
(c) Particular content areas and grade levels which qualify for
reimbursement may be specified based upon information about the
level of academic preparation of the teacher employed, local stu-
dent performance data, and instructional need.
(7) Professional development credit shall not be awarded for
those experiences [activities] that provide remuneration beyond
travel, food, lodging or tuition.
(8) A school district implementing a flexible professional devel-
oment schedule shall award professional development credit for
any experience that addresses the goals of the school or district
improvement plan or the individual professional growth plans of
teachers [given academic school year within the professional de-
velopment plan].

(9) Appropriate professional development experiences shall be
those which address instructional improvement for the school dis-
trict, an individual school or a group of teachers in accordance with
goals identified from the needs assessment.
(10) [Experiences that do not qualify as high-quality] [10] Activi-
ties which are not appropriate for professional development ex-
periences shall include the following:
(a) Organizational business meetings;
(b) Compiling class rosters;
(c) Scheduling (including training on the operation of student
management software);
(d) Textbook adoption committee meetings;
(e) Writing lesson plans;
(f) Housekeeping duties;
(g) Faculty meetings;
(h) Extracurricular activities;
(i) PTA/PTO meetings;
(j) Sporting events;
(k) Field trips; [and]
(l) Parent/teacher conferences.
(m) CPR/First Aid;
(n) Blood-born Pathogens;
(o) Athletic Seminars;
(p) School-based decision-making (SBDM) training for non-
council members;
(q) Kentucky Teacher Internship Program (KTIP) mentor train-
ing assessment.
(r) Other professional development training that is not state-
mandated or is not included in the district or school improvement
plan or in an individual's growth plan shall not be considered high-
quality or appropriate professional development.
(11) [11] Parent-teacher conferencing skill development shall be
permissible as a professional development experience.

Section 5. The Qualifications and Duties of the District Profes-
sional Development Coordinator. (1) Qualifications for the position
of district professional development coordinator shall include:
(a) A staff member meeting the certification requirement for a
professional development coordinator as established by the Edu-
cation Professional Standards Board in 16 KAR 4:019 [704-KAR
26-148];
(b) Experience in professional development planning; and
(c) A demonstrated ability to connect professional development
with effective instructional practices and student achievement data.
(2) Duties of the district professional development coordinator
shall include:
(a) Conducting [Conducts] the district professional develop-
ment needs assessment;
(b) Coordinating [Coordinates] the intradistrict alignment of
goals, objectives, and experiences [activities] for professional de-
velopment;
(c) Providing [Provides] technical assistance to school coun-
cils, staff and professional development committees in the align-
ment of professional development experiences [activities] with
school goals as identified through the local school improvement
planning process.
(d) Disseminating [Disseminates] professional development
information to school councils, staff members, and professional
development committees;
(e) Coordinating [Coordinates] the planning, implementation
and evaluation of the district professional development program
that [which] is aligned, supportive, and developed in conjunction
with local school improvement plans;
(f) Upon request by a school council or school staff, providing
[provides] technical assistance on the evaluation and coordination
of school-based professional development experiences [activities];
(g) (6) Coordinating [Coordinates] the establishment of local
policies, procedures, timetables, preparation of necessary forms
and letters, assignment of workshop sites and other practical
elements of professional development training, including fiscal
management;
(h) Maintaining, verifying, and, if appropriate, submitting
[Maintains, verifies and, when appropriate, submits] district and
school professional development records, documentation, and
Section 6. A maximum of fifteen (15) percent of the district's professional development grant may [More than fifteen (15)-percent of the district's professional development grant shall not] be used for administrative purposes.

Section 7. When implementing professional development programs under KRS 158.070, a local school or district shall adhere to its school or district improvement plan [professional-development plan].

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 156.0170(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chair
APPROVED BY AGENCY: February 10, 2005
FILED WITH LRC: February 10, 2005 at 11 a.m.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes hazardous material standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant secretary" means the Commissioner [Secretary] of Labor, Commonwealth of Kentucky.

(2) "Employer" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Standard" is defined in KRS 338.015(3).

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 4 of this administrative regulation as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation.

Section 3. Automotive Service Station. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.106(a)(3)(2).

(2) Automotive service station, or service station, means that portion of property where flammable or combustible liquids used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and shall include any facilities available for the sale and service of tires, batteries, and accessories, and for minor automotive maintenance work, and shall also include private stations not accessible or open to the public such as those used by commercial, industrial, or governmental establishments. This section shall not apply to agriculture.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.101 through 1910.106(a)(2), revised as of July 1, 2004 [2004];

(b) 29 C.F.R. 1910.105(a)(4) through 29 C.F.R. 1910.126 [420], revised as of July 1, 2004 [2004]; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor [Cabinet], Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: January 28, 2005
FILED WITH LRC: February 15, 2005, at 10 a.m.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Employee" is defined in KRS 338.015(2).

(2) "Employer" is defined in KRS 338.015(1).

(3) "Established federal standard" is defined in KRS 338.015(10).

(4) "National consensus standard" is defined in KRS 338.015(9).

(5) "Standard" is defined in KRS 338.015(3).

(6) "U.S. Department of Labor" means Kentucky Department of Labor, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.
Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. Part 1910.132-138, Subpart I, "Personal Protective Equipment", revised as of July 1, 2004 (2003), published by the Office of the Federal Register, National Archives and Records Services, General Services Administration; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This material may also be obtained from the Office of the Federal Register, National Archives and Records Services, General Services Administration.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: January 26, 2005
FILED WITH AGENCY: February 14, 2005 at 10 a.m.
CONTACT PERSON: David Stumbo, Health Standards Specialist, Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at AFRS, April 12, 2005)


RELATES TO: KRS Chapter 338.061–338.064I, 29 C.F.R. Part 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes [and 338.061 authorizes] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes machinery and machine guarding standards to be enforced by the Division of Occupational Safety and Health Compliance in express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions [Applicable to this Part]. (1) "Fed" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Commissioner [Secretary] of Labor, Commonwealth of Kentucky.

(2) "Employer" is defined in KRS 338.015(2) [means any person employed except those employees excluded in KRS 338.021].

(3) [4] "Employer" of defined in KRS 338.015(1).

(4) [1] means any entity for whom a person is employed except those employees excluded in KRS 338.021.

(5) "Established federal standard" means any operable occupational-safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" is defined in KRS 338.015(3) [means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization].

(7) "Standard" is defined in KRS 338.015(3) [means a standard which requires conditions or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."]

(8) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S.–127 South, Frankfort, Kentucky 40601.

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 5 of this administrative regulation as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this administrative regulation.

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Department of Labor, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Section 4. Clutch/Brake Control. (1) The language relating to clutch/brake controls on mechanical-power presses with part-revolution-clutches, in subsection (2) of this section, shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(viii) and subsection (2) of this section.

(2) [29 C.F.R. 1910.217(b)(7)(viii) is amended to read 'The clutch/brake control shall incorporate an automatic means to prevent initiation or continuous activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision shall [will] not prevent the employer from utilizing a reversing means of the drive motor with the clutch/brake control in the "nch" position'.

Section 5. [3] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.211 through 1910.217(b)(xi), revised as of July 1, 2004;

(b) 29 C.F.R. 1910.217(b)(xii) through 1910.222, revised as of July 2, 2004; and

(c) The revisions to 29 C.F.R. 1910.217 and 1910.219, as published in the June 8, 2004, Federal Register, Volume 69, Number 22 [222, Subpart O, "Machinery and Machine Guarding", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions.


(g) The removal of 29 C.F.R. 1910.220, "Effective Dates", as
published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Labor [obtained, and copied at: Kentucky Labor Cabinet], Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: January 26, 2005
FILED WITH LRC: February 14, 2005 at 10 a.m.
CONTACT PERSON: Chuck Stirling, Safety Standards Specialist, Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601. Phone (502) 564-3070, fax (502) 564-1682.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at AARS, April 12, 2005)

803 KAR 2:317. Special industries.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes commercial diving operations standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions. (1) "Assistant Secretary" means the Commissioner of Labor, Commonwealth of Kentucky.

(2) "Employee" is defined in KRS 338.015(2).

(3)(2) " Employer" is defined in KRS 338.015(1).

(4)(9) " Standard" is defined in KRS 338.015(3).

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.261 through 29 C.F.R. 1910.272 and Appendices, revised as of July 1, 2004 [2004]; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor [Cabinet], Division of Education and Training, U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: January 26, 2005
FILED WITH LRC: February 14, 2005 at 10 a.m.
CONTACT PERSON: Chuck Stirling, Safety Standards Specialist, Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601. Phone (502) 564-3070, fax (502) 564-1682.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at AARS, April 12, 2005)


STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. Part 1910
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-731, effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes commercial diving operations standards to be enforced by the Division of Occupational Safety and Health Compliance in general industry.

Section 1. Definitions [Applicable to this Part]. (1) ["Act" means KRS Chapter 338.]

(2) ["Assistant Secretary of Labor" means the Commissioner of Labor, Commonwealth of Kentucky.]

(3) ["Employee" is defined in KRS 338.015(2).]

(4) ["Employer" is defined in KRS 338.015(1).]

(5) ["Established federal standard" means any applicable federal standard established by the U.S. Department of Labor, the U.S. Department of Commerce, or the U.S. Department of Energy.]

(6) ["Standard" is defined in KRS 338.015(3).]

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. 1910.261 through 29 C.F.R. 1910.272 and Appendices, revised as of July 1, 2004 [2004]; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Labor [Cabinet], Division of Education and Training, U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.
incorporated by reference in Section 4 of this administrative regulation as modified by the definitions in Section 1 and requirements of Section 3 of this administrative regulation.

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report such information to the Department of Labor, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 C.F.R. [Part 1910.401-1910.441] and Appendices, revised as of July 1, 2004; and [ ] revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, are hereby incorporated by reference.

(b) The revisions to 29 C.F.R. 1910.401, 1910.402, and Appendix C to Subpart T of Part 1910, as published in the Federal Register, Volume 68, Number 31 [440, "Record-keeping Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [obtained, and copied at the [ ]
Kentucky Department of Labor Cabinet, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday, 8 a.m. to 4:30 p.m.

This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.

PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: January 26, 2005
FILED WITH LRC: February 14, 2005 at 10 a.m.
CONTACT PERSON: Chuck Stirling, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, April 12, 2005)

803 KAR 2:408. Tools - hand and power.

RELATES TO: KRS Chapter 338[051-338.061], 29 C.F.R. 1926
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 C.F.R. 1926
NECESSITY, FUNCTION, AND CONFORMITY: EO 2004.273
Effective July 9, 2004, created the Environmental and Public Protection Cabinet, abolished the Labor Cabinet, and created the Department of Labor within the Environmental and Public Protection Cabinet. KRS 338.051(3) authorizes (and 338.061 authorizes) the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards. This administrative regulation establishes hand and power tool safety standards to be enforced by the Division of Occupational Safety and Health Compliance in the construction industry. [Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.]

Section 1. Definitions. (1) "Employee" is defined in KRS 338.015(2).
(2) "Employer" is defined in KRS 338.015(1).
(3) "Standard" is defined in KRS 338.015(3).

Section 2. General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference.

(a) 29 C.F.R. 1926.300-1926.307 revised as of July 1, 2004; and [ ] published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, as published in the Federal Register, Volume 61, Number 146, March 7, 1996.
(c) The amendment to 29 C.F.R. 1926.300, "General requirements", as published in the Federal Register, Volume 61, Number 146, March 7, 1996.

(d) The amendment to 29 C.F.R. 1926.304, "Woodworking tools", as published in the Federal Register, Volume 61, Number 146, March 7, 1996.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [ ]
Kentucky Department of Labor Cabinet, Division of Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday, 8 a.m. to 4:30 p.m.

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PHILIP ANDERSON, Chairman
APPROVED BY AGENCY: January 26, 2005
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CONTACT PERSON: Chuck Stirling, Safety Standards Specialist, Kentucky Department of Labor, 1047 U.S. Hwy 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564 3070, fax (502) 564-1682.

- 1819 -
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Comments)

401 KAR 63:005. Open burning.

RELATES TO: KRS 149.400, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7401-7671q
STATUTORY AUTHORITY: KRS 149.400, 224.10-100, 224.20-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.400 prohibits setting fires within 150 feet of woodland or brushland during fire-hazard seasons except under certain prescribed conditions. KRS 224.10-100 requires the [Natural-Resources-and] Environmental and Public Protection Cabinet to promulgate [required] administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-110 [100] prohibits any person from directly or indirectly, emitting into or discharging into the air under the jurisdiction of the commonwealth, or causing, permitting, or allowing to be emitted or discharged into such air, any contami-nants as provided for in subsection (1) of KRS 224.01-010 that shall cause or contribute to the pollution of the air of the commonwealth in contravention of any of the rules, administrative regula- tions, or orders of the cabinet. This administrative regulation pro- vides for the control of open burning.

Section 1. Definitions. Terms not defined in this section shall have the meaning given them in 401 KAR 63:001.

(1) "Clean lumber" means wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products and does not include commercial or industrial waste or wood products that have been painted, pigment-stained, or pressure-treated using any hazardous or toxic (by) compounds such as chromate, copper, arsenate, pentachlorophenol, and creosote.

(2) "Fire training" means the instruction of industrial, public and private firefighting personnel conducted in accordance with safety standards and procedures as accepted by the Kentucky State Fire Marshal, the Kentucky Fire Commission or the National Wildfire Coordinating Group.

(3) "Garbage" means putrescible animal and vegetable matter accumulated [by a family in a residence] in the course of ordinary day-to-day living.

(4) [3] "Household rubbish" means waste material and trash[] not-to-include garbage, normally accumulated by a family in a residence in the course of ordinary day-to-day living, not to include garbage, cans, glass, plastic, or other potentially hazardous waste materials.

(5) "Land clearing" means clearing of land for agricultural, residential, industrial, or commercial development purposes, including the construction of roads.

(6) [30] "Open burning" means the burning of any matter without a [an-]approved burn chamber approved by the Kentucky Division for Air Quality, or without [and] a stack or chimney with [approved] control devices approved by the Kentucky Division for Air Quality.

(7) [40] "Priority I Region" means a region classified as Priority I in 401 KAR 50:020, Appendix A.

(8) "Recognized agricultural, silvicultural, range, ecological, or wildlife management practices" means burning recognized by the Kentucky Department of Agriculture, the United States Department of Agriculture, the Kentucky Division of Forestry, the United States Forest Service, the Kentucky Department of Fish and Wildlife, the Kentucky State Nature Preserve Commission, or the United States Fish and Wildlife Service as necessary to promote cultivation of crops, range, and forest lands, weed and underbrush abatement and pest control and prevention.

(9) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), felled trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and slashings. Wood waste does not include:

(a) Yard waste;
(b) Construction, renovation, or demolition wastes; or
(c) Clean lumber.

(10) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs, which come from residential, commercial, retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

(a) Construction, renovation, and demolition wastes; or
(b) Clean lumber.

Section 2. Applicability. This administrative regulation shall apply to all open burning that is not subject to another administrative regulation in 401 KAR Chapters 50 through 65.

Section 3. Prohibition of Open Burning. Except as provided in Sections 4 and 5 of this administrative regulation, open burning is prohibited.

Section 4. Allowable Open Burning. Subject to the limitations contained in this section and the restrictions contained in Section 5 [4] of this administrative regulation, open burning will be allowed for:

(1) Fires set for the cooking of food for human consumption;
(2) Fires set for recreational or ceremonial purposes;
(3) Small fires set by construction and other workers for comfort heating purposes if:
(a) The ambient temperature is below fifty (50) degrees Fahrenheit;
(b) Excessive or unusual smoke is not created;
(c) Only clean lumber or vegetative matter is burned; and
(d) The fire is burned in a container not exceeding fifty-five (55) gallons in size;
(4) Fires set for the purpose of weed abatement, disease, and pest prevention;
(5) Fires set for prevention of a fire hazard, including the disposal of dangerous materials if no safe alternative is available;
(6) Fires set for the purpose of instruction and training of public and industrial employees in the methods of fighting fires as set forth in Section 6 [6] of this administrative regulation;
(7) Fires set for recognized agricultural, silvicultural, range, ecological, and wildlife management practices;
(8) Fires set by individual homeowners for burning of leaves except in cities greater than 6,000 population located in a Priority I Region;
(9) Fires for disposal of household rubbish, not to include garbage, originating at dwellings of five (5) family units or less, if the fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 6,002 population located in a Priority I Region;
(10) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
(11) Fires set for disposal of natural growth for land clearing and maintenance, and trees and tree limbs felled by storms if no extraneous materials, such as tires or heavy oil which tend to produce dense smoke, are used to cause ignition or aid combustion and the burning is done on days when conditions do not pose a threat of igniting a forest fire. In regions classified Priority I, with respect to particulate matter pursuant to 401 KAR 50:020, Appendix A, the emissions from such fires shall not be equal to or greater than forty (40) percent opacity;
(12) Heating ropes that are set on fire to repair steel rails during cold weather; and

Section 5. Permit Requirements and Fees.

(1) Any person desiring to have his open burning permitted shall apply for a burning permit in the form prescribed by the cabinet for that purpose.

(2) Any burning permit granted by the cabinet may be revoked by the cabinet at any time if the cabinet determines that, after the permit was granted, the conditions upon which the permit was granted have changed to such an extent that the issuance of the permit was not justified.

Section 6. Reporting of Offense.

(1) If any person shall violate any provision of this administrative regulation, the cabinet or his duly authorized subordinate shall immediately issue a citation.

(2) Any person receiving a citation under subsection (1) of this section may appeal to the administrative appeals board established by KRS 149.400.

Section 7. Penalties.

(1) Any person who violates any provision of this administrative regulation shall be punished by a fine of one (1) dollar for each violation, payable to the commonwealth and collected by the cabinet.

(2) Any person who violates any provision of this administrative regulation and who has previously been convicted of a violation of this administrative regulation shall be punished by a fine of twenty-five (25) dollars for each violation, payable to the commonwealth and collected by the cabinet.
(13) Fires set by county or municipal governments to dispose of wood waste or clean lumber.

Section 5. [41] Restrictions to Open Burning. (1) For those counties, or portions of counties, which are, or were previously, designated moderate nonattainment for the one (1) hour ozone or nonattainment for the PM10 standard, or all counties, or portions of counties, which are, or were designated nonattainment for the eight (8) hour ozone or PM2.5 national ambient air quality standards, pursuant to 401 KAR 51:010, fires may be set in accordance with this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed are:

(a) Fires set for the cooking of food for human consumption;
(b) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;
(c) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
(d) Fires set for recognized agricultural, silvicultural, range, ecological, and wildlife management practices;
(e) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning; and
(f) Fires set for recreational or ceremonial purposes.

(2) In accordance with KRS Chapter 149:400. During the period commencing February 15 through April 30 and October 1 through December 15 each year, open burning shall not be conducted closer than 150 feet of any woodland or brushland between the hours of 6 a.m. and 6 p.m. except when the ground is covered with snow. These restrictions do not apply to fires set for the purpose of burning plant beds, fires set in conjunction with the construction, operation, or maintenance of railroads, pipelines, power lines, or other projects in the public interest, or fires set by a state government agency, or a nongovernmental organization that has obtained approval from the Kentucky Division of Forestry, for wildlife or plant habitat improvement, ecological site restoration, site preparation for natural or artificial regeneration, or fuel reduction.

(3) Open burning for land clearing purposes associated with residential, commercial, or industrial development shall be limited to a maximum of two (2) contiguous acres at any one (1) time.

(4) This administrative regulation does not authorize open burning that is prohibited by KRS laws or by local ordinances.

Section 6. [61] Procedures for Fire Training. Burning conducted in conjunction with training for public, private and industrial firefighters is subject to the following criteria:

(1) All fire training shall be conducted in accordance with safety standards and procedures as accepted by the Kentucky State Fire Marshal, the Kentucky State Fire Commission or the National Wildfire Coordinating Group.

(2) Excluding fire training that has been approved by the Kentucky State Fire Marshal, or which has been certified (sanctioned) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, any entity intending to conduct fire training shall submit written notification to the local Division for Air Quality regional office a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinator, the number of firefighters to be trained, the goals and the objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.

(3) Any materials that are known to contain asbestos shall not be burned. When training includes fire training that the materials do not contain asbestos.

(4) Materials likely to produce hazardous or toxic emissions must be removed prior to the fire training burning event, to the extent practicable, and properly disposed.

(5) Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (sanctioned) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, entities conducting fire training shall be limited to one burning event related to training per year for every ten firefighters under their supervision.

(6) Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (sanctioned) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, between May 1 and September 30, fire training shall not be conducted in any counties, or portions of counties, which are, or were previously, designated moderate nonattainment for ozone, or designated, or previously designated, nonattainment for the eight (8) hour ozone or PM2.5 (particulate matter) national ambient air quality standard, pursuant to 401 KAR 51:010.

[41] Prohibition of Open Burning. Except as provided in this section open burning is prohibited. Fires may be set for the purposes specified in this section throughout the year in any area of the Commonwealth which is not designated, or was not previously designated, moderate nonattainment for ozone pursuant to 401 KAR 51:010, if the fires do not violate KRS Chapters 149, 160, 227, other laws of the Commonwealth of Kentucky, or local ordinances. Purposes for which open burning is allowed are:

(a) Fires set for the cooking of food for human consumption;
(b) Fires set for recreational or ceremonial purposes;
(c) Small fires set by construction and other workers for comfort purposes if excessive or unusual smoke is not created;
(d) Fires set for the purpose of weed abatement, disease, and pest prevention;
(e) Fires set for prevention of a fire hazard, including the disposal of dangerous materials if no safe alternative is available;
(f) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
(g) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;
(h) Fires set by individual homeowners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;
(i) Fires for disposal of household rubbish, not to include garbage originating at dwellings of five (5) family units or less, if the fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;
(j) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
(k) Fires set for disposal of natural growth for land clearing, and fires and tree limbs fallen by storm, if no extraneous materials such as tires or heavy oil which tend to produce dense smoke are used to cause ignition or aid combustion and the burning is done on days when conditions do not pose a threat of igniting a forest fire. In regions classified Priority I with respect to particulate matter pursuant to 401 KAR 50:020, Appendix A, the emissions from such fires shall not be equal to or greater than forty (40) percent opacity.

(61) Heating ropes that are set on fire to repair steel rails during cold weather.

Section 4. Additional Restrictions for Ozone-Nonattainment Areas and Areas Previously Designated Nonattainment for Ozone. For those areas which are, or were previously, designated moderate nonattainment for ozone pursuant to 401 KAR 51:010, fires may be set according to the provisions of Section 3 of this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed are:  

-1821-
(1) Fires set for the cooking of food for human consumption;
(2) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;
(3) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
(4) Fires set for recognized agricultural, avicultural, range, and wildlife management practices;
(5) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products, or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning; and
(6) Fires set for recreational or ceremonial purposes.

LAUANA S. WILCHER, Secretary
APPROVED BY AGENCY: March 15, 2005
FILED WITH LRC: March 15, 2005 at 3 p.m.
CONTACT PERSON: Sean Alteri, Environmental Control Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382, fax (502) 573-3767.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sean Alteri

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation allows for the open burning of specific materials within certain limitations and restrictions.
(b) The necessity of this administrative regulation: The cabinet is required to adopt and enforce administrative regulations that protect human health and the environment. This administrative regulation prescribes the types of material that can be burned, and the time and places where burning can occur to minimize the impact on human health and the environment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation minimizes the release of air contaminants resulting from open burning.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The cabinet is required to protect human health and the environment by promulgating administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation minimizes the release of air contaminants resulting from open burning.

(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 proposed amendment to this administrative regulation will clarify those instances when open burning is permitted. The amendment will also provide added flexibility for municipal and county governments in disposing of vegetative matter.
(b) The necessity of the amendment to this administrative regulation: Problems involving the disposal of debris from storms and of other similar materials indicated that the existing administrative regulation required clarification. Also, the open burning of cans, glass, plastic, or other potentially hazardous waste materials was not addressed in the existing regulation.
(c) How the amendment conforms to the content of the authorizing statutes: The existing regulation already conforms to the content of the authorizing statutes. The proposed amendment does not affect the intent of the existing regulation. The amendment serves to clarify certain sections of the administrative regulation.
(d) How the amendment will assist in the effective administration of statutes: The proposed amendment will provide both the cabinet and affected sources more specific regulations governing open burning issues. The language and format of the proposed amendment is also simplified for understanding by all of the citizens of the commonwealth.
(3) List the type and number of individuals, businesses, or state and local governments affected by this administrative regulation. All individuals, entities and organizations with the potential to open burn are 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: The amended administrative regulation will provide residences and municipal or county governments with an alternative disposal method of yard waste, wood waste, and clean lumber.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The division will not incur any additional costs to implement the proposed amendment to this administrative regulation.
(b) On a continuing basis: There will not be any continuing costs associated with the implementation of the amendment to this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division's operating budget will continue to be used to implement and enforce the amended 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. No increase in fees or funding is necessary to implement the proposed amendment to the existing administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. The amended administrative regulation will not establish any fees, nor will it 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 of tiering is not applicable to this administrative regulation. Any person is allowed to open burn if they follow the requirements of the proposed administrative regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does the amendment to 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 amended administrative regulation affects. Local governments engaging in waste disposal activities may be affected by the proposed amendment to this administrative regulation. Local governments will have the option to burn wood waste, yard waste, and clean lumber. Also, the materials that are allowed to be burned are defined more clearly in this amended administrative regulation.
3. State the aspect or service of local government to which this amended administrative regulation relates. Local governments will have the option to burn wood waste, yard waste, and clean lumber. Also, the materials that are allowed to be burned are defined more clearly in this amended administrative regulation.
4. Estimate the effect of this amended 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.

Fiscal Note

Expenditures (+/-): There may be a reduction in local government expenditures as a result of this proposed amendment.

Other Explanation: There is no further explanation.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amended After Comments)


RELATES TO: KRS 441.055
STATUTORY AUTHORITY: KRS 13A.350, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055
requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails. This administrative regulation sets forth fiscal [physical] management procedures to be followed in jails.

Section 1. Budgeting. (1) The jailer, county judge/executive and treasurer shall prepare and present a line item budget request to the fiscal court in accordance with KRS 441.215.

(2) The jailer shall use the format for budget development on forms prepared by the Governors Office for Local Development [State and Local Finance Office].

(3) The Governors Office for Local Development [State and Local Finance Office] shall submit budget forms to the jailer by March 1 of each year.

Section 2. Accounting. (1) The county treasurer shall maintain fiscal records which clearly indicate the local cost for operating the jail in accordance with KRS 68.020 and 441.235.

(2) Fiscal records shall have an itemized breakdown of the total operating expenses including but not limited to wages, salaries, food and operating supplies.

Section 3. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide prisoners [inmates] with approved items. The records of income, expense, and disbursements of the canteen shall be examined [audited] annually by the Auditor of Public Accounts concurrently with the annual audit of the county conducted in accordance with KRS 43.070(1)(a), unless the Auditor of Public Accounts agrees to resign to perform the examination of the canteen fund or has failed to respond to written notice of intent to employ a certified public accountant within thirty (30) days of receipt of the notice. The county judge/executive may advise the Auditor of Public Accounts of the specific requirements of the jail canteen examination to be performed. The Auditor of Public Accounts shall forward a copy of the report of any jail canteen examination it performs to the Kentucky Department of Corrections. The cost of the canteen fund examination shall be paid as an allowable expense to cover the expense of the examination, the expense shall be borne by the county jail fund [this audit may be paid by the county's general fund, the jail's general fund, or the jail's canteen fund].

Section 4. Audits. The county jail budget shall be audited in accordance with KRS 43.070.

Section 5. Payroll. Jail employees shall be paid on the same dates as county employees.

Section 6. Inventory. Each jailer shall implement and utilize the established inventory procedure of the county.

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 1A.120(5) and 13A.229(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: April 11, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth fiscal management procedures to be followed in full-service jail facilities.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How this administrative regulation conforms to the content of the existing administrative regulation: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.

(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 requires that county jail prisoner can- teens have an annual audit performed by the Auditor of Public Accounts or through another entity if the Auditor does not perform the audit and changes the name of a government office to reflect its new name.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How the amendment conforms to the content of the existing administrative regulation:
(d) How the amendment will assist in the effective administration of the statute: The amendment adopts the commission recommendations as required by the statute.
(e) How the amendment will assist in the effective administration of the statute: It provides jails electing to house state prisoners with the minimum standards required.
(f) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 76 jails and the prisoners that are in the custody of the jails.
(g) Provide an estimate 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 jails will have to have its prisoner canteen accounts audited on a yearly basis.
(h) Provide an estimate of how much it will cost to implement this administrative regulation:
(i) Initially: Cost of an audit of the canteen account
(j) On a continuing basis: Annual cost of an audit of the canteen account.
(k) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Canteen account, jail account.
(l) 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
(m) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(n) TIERING: Is tiering applied? No, 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 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 will affect. County jails that house state prisoners.
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. The regulation relates to county jails that house state prisoners by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.
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 (+/-): None
Expenditures (+/-): Direct cost of an audit of the canteen account.

Other Explanation: The annual audit cost of the canteen account may be paid for out of the canteen account or the jail account.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Division of Local Facilities
(Amended After Comments)

501 KAR 7:030. Fiscal management.

RELATES TO: KRS 441.055
STATUTORY AUTHORITY: KRS 13A.350, 441.055
NECESSITY, FUNCTION, AND CONFORMITY: KRS 441.055 requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for detention facilities. This administrative regulation sets forth fiscal management procedures to be followed in restricted custody centers.

Section 1. Budgeting and Accounting. The center's budget and fiscal records shall be kept in accordance with the general records of the center.

Section 2. Canteen. As provided in KRS 441.135, each jailer may establish a canteen to provide residents with approved items not supplied by the center. The records [record] of income, expense, [expenses] and disbursements of the canteen shall be examined [audited] annually by the Auditor of Public Accounts concurrently with the annual audit of the county conducted in accordance with KRS 43.070(1)(a), unless the Auditor of Public Accounts declines to perform the examination of the canteen fund or has failed to respond to written notice of intent to employ a certified public accountant within thirty (30) days of receipt of the notice. The county judge/executive may advise the Auditor of Public Accounts of the specific requirements of the jail canteen examination to be performed. The Auditor of Public Accounts shall forward a copy of the report of any jail the canteen fund examination shall be paid as an allowable expense to cover the expense of the examination. If the jail's canteen fund is insufficient to cover the expense of the examination, the expense shall be borne by the county jail fund. [The cost of this audit may be paid by the county's general fund; the jail's general fund or the jail's canteen fund.]

This is to certify that the Jail Standards Commission has approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a).

JOHN D. REES, Chairman, Commissioner
APPROVED BY AGENCY: April 11, 2005
FILED WITH LRC: April 16, 2005 at 11 a.m.

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kelly W. White
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes fiscal management procedures for 501 KAR Chapter 7 regulation restricted custody jail facilities.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation complies with KRS 441.055 and adopts the recommendations of the Jail Standards Commission to establish minimum standards for jails that house state prisoners.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the regulation required by the authorizing statute concerning jails.
(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 requires that county jail prisoner canteens have an annual audit performed by the Auditor of Public Accounts or through another entity if the Auditor does not perform the audit.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 441.055.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment adopts the commission recommendations as required by the statute.
(d) How the amendment will assist in the effective administration of the statutes: It provides jails electing to house state prisoners with the minimum standards required.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 21 jails and the prisoners that are in the custody of the jails.
(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 jail will have to obtain an annual audit of the canteen if it has a canteen.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The cost of the annual audit.
(b) On a continuing basis: The cost of the annual audit on a yearly basis.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The cost of the annual audit may be covered by the canteen account or the jail budget.
(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 state funds are required to implement the amendments.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? No, 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.

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 will affect. County jails that house state prisoners.
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.
4. The regulation relates to county jails that house state prisoners by being part of the regulatory scheme that sets minimum standards for these jails pursuant to KRS 441.055.
5. 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 (+/-): None
Expenditures (+/): Direct cost of an audit of the canteen ac-
count.

Other Explanation: The annual audit cost of the canteen account may be paid for out of the canteen account or the jail account.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Division of Oil and Gas Conservation
(Amended After Comments)

805 KAR 9:010. Protection of fresh water zones.

RELATES TO: KRS 349.045, 349.110, 40 C.F.R. Parts 124, 136, 144, 146-148

STATUTORY AUTHORITY: KRS 349.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 authorizes the Department for Natural Resources to adopt all rules, administrative regulations, and amendments to implement the provisions of KRS Chapter 349 governing coal bed methane wells. The water quality of fresh water zones is protected by KRS 349.035. KRS 349.110 provides that the Department for Natural Resources shall exercise supervision over the drilling, casing, plugging, and filling of all coal bed methane wells. This administrative regulation establishes requirements [it is the purpose of this administrative regulation] to protect fresh water zones from contamination associated with the production of coal bed methane.

Section 1. Definitions. The definitions contained in KRS 349.010 and the following additional definitions shall apply to this administrative regulation:

(1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) "Casing or casing string" means steel tubes or pipes installed in a well.

(4) "Cement" means hydraulic cement properly mixed with water or with standard additives, which is used to fill the annulus of casing strings or to plug the well.

(5) "Division" means the Division of Oil and Gas Conservation.

(6) "Freshwater zone" means the groundwater contains less than 10,000 ppm total dissolved solids.

(7) "Groundwater supply source" means a well, spring, or other groundwater source that is currently being utilized as a water supply for domestic, agricultural, industrial or other beneficial purposes.

(8) [ (8) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand-up and protect a fresh water zone.

(9) "Intermediate casing" means one (1) or more strings of pipes installed in a well, in addition to the surface casing, in which each string is smaller in diameter than the previous one (1).

(10) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(11) "Surface casing" means the first and largest diameter casing installed in a well; its primary uses are to prevent collapse of the bore hole and protect fresh water zones.

(12) [ (9) "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2. Groundwater Information. (1) Baseline groundwater information shall be collected for the area surrounding a coal bed methane well location prior to the drilling of the proposed well. This information shall include an inventory of groundwater supply sources [supplies, including wells, springs, and underground mines] which are located within [250 feet of the well [and] are currently being used, have previously been used, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purposes]. The inventory shall include:

(a) The location of the groundwater supply source;

(b) The type of usage of the groundwater supply source;

(c) The diameter and depth of wells, if [where] possible to determine;

(d) The approximate rate of usage, capacity, or discharge from the groundwater supply source [wells, springs, and underground mines, if possible to determine; and

(e) Groundwater quality and quantity information required in subsection (2) of this section for each groundwater supply source located within 1,250 feet of the coal bed methane well.

(2) Groundwater quality and quantity baseline information for each groundwater supply source within 1,250 feet of the coal bed methane well shall be maintained for the life of the well. This information shall include the following:

(a) The elevation of groundwater in wells and underground mines, or the flow or discharge from springs;

(b) Total dissolved solids;

(c) Specific conductance, corrected to twenty-five (25) degrees C;

(d) pH;

(e) Chlorides [Dissolved-Ion];

(f) Bromides [Dissolved-manganese];

(g) Acidity;

(h) Alkalinity; and

(i) Sulfate.

(3) The water quality sampling and analysis required by this section shall be conducted in accordance with 40 C.F.R. Part 136. Sampling and analysis results shall be provided to the department at the time of permit application.

(4) The applicant shall identify all water supply wells being used for residential or domestic purposes within one-half (1/2) mile of the proposed coal bed methane well and shall comply with the groundwater protection requirements of KRS 349.040(3)(d).

Section 3. Protection of Fresh Water Zones for Drilling or Plugging Operations. (1) During drilling operations, one (1) of the following methods shall be used to protect fresh water zones:

(a) Method A. Casing shall be set on a casing shoulder and shall have a shoe installed on the bottom of the bottom joint. Upon the completion of the drilling program, all the recoverable casing shall be removed or cemented to the surface.

(b) Method B. Casing shall be set on a shoulder and cemented sufficiently to cover 100 feet, including the shoe. Upon completion of the drilling, all of the recoverable casing shall be removed or cemented to the surface.

(c) Method C. The operator shall utilize a top to bottom drilling mud system, with a filtrate water loss of less than ten (10) cubic centimeters.

(2) If [in-the-event] a well is to be plugged, it shall be plugged in the manner prescribed by 805 KAR 9:040.

Section 4. Protection of Fresh Water Zones. Coal bed methane wells subject to the jurisdiction of the Department for Natural Resources drilled subsequent to the effective date of this administrative regulation shall be equipped as follows in order to protect non-producing fresh water zones prior to production or injection.

(1) A protective string of casing, either surface, intermediate, or long string, shall extend thirty (30) feet below the deepest known fresh water zone. The protective string shall have cement circulated in the annular space outside the casing of a sufficient volume of cement, calculated using the standard cement volume formula and acceptable constants of well bore hole size, casing size, and casing weight [approved engineering methods], to assure the return of the cement to the surface. If cement does not return to the surface, the operator shall attempt to fill the annular space by introducing cement from the surface, utilizing a cement basket in order to ensure annular seal at the surface. If the intermediate casing or long casing string is cemented to the surface or cemented thirty (30) feet into the next larger string of cemented casing in conformity with this subsection [whereas procedures for the string or combination of strings shall be considered as the fresh water protection.

(2) In areas where abnormal pressures are expected or encountered, the surface or intermediate casing string shall be anchored in sufficient cement, at a sufficient depth to contain the pressures, and blowout prevention valves and related equipment
VOLUME 31, NUMBER 11 – May 1, 2005

shall be installed.

(3) If a well is drilled through a void, the hole shall be drilled at least thirty (30) feet below the void, the annular space shall be cemented from the base of the casing up to the void and to the surface from the top of the void, or it shall be cemented at least fifty (50) feet into the next higher string or strings of casing that are cemented to the surface and be verified by a cement log. If an operator is unable to perform the casing and cementing requirement described above [For good cause shown], the department may approve alternative casing procedures proposed by the operator, if [there is] such evidence that the operator determines that the alternative casing procedures are operationally equivalent to the requirements imposed by this subsection. If an operator encounters more than one (1) void [For good cause shown], the department may also impose special requirements on the operator to prevent communication between two (2) or more voids.

Section 5. Wells Used for Injection of Fluids from Coal Bed Methane Production. Injection well operation shall be in accordance with administrative regulations and permit requirements of the U.S. Environmental Protection Agency (EPA) as set forth in 40 C.F.R. Parts 124, 144, and 146 through 148.

Section 6. Recordkeeping. (1) Within ninety (90) days of completion of the drilling of the well, the operator shall file a complete report on Form CBM-3, entitled "Affidavit of Well Log and Completion Report," which reports the casing and cementing as constructed.

(2) Injection well records shall be filed with EPA in accordance with EPA regulations and permit requirements as set forth in 40 C.F.R. Parts 124, 144, and 146 through 148.

Section 7. Material Incorporated by Reference. (1) "Affidavit of Well Log and Completion Report," Form CBM-3, January 2005, Division of Oil and Gas Conservation, is incorporated by reference [as Form CBM-3].

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, Division of Oil and Gas Conservation, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2005 at 2 p.m.
CONTACT PERSON: Rick Bender, Director, Department for Natural Resources, Division of Oil and Gas Conservation, P. O. Box 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0147, fax (502) 573-0152.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rick Bender
(1) Provide a brief summary of:
(a) What this administrative regulation does: It establishes requirements for the protection of fresh water zones during coal bed methane well production or injection.
(b) The necessity of this administrative regulation: With the passage of legislation in the 2004 General Assembly encouraging the production of coal bed methane, this administrative regulation is necessary to protect fresh water zones during drilling and production of coal bed methane.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 349.115 authorizes the Department for Natural Resources to adopt all rules, administrative regulations, and amendments to implement the provisions of KRS Chapter 349 governing coal bed methane wells. It is the purpose of this administrative regulation to protect fresh water zones from contamination associated with the production of coal bed methane.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation creates the standard whereby coal bed methane producers in the commonwealth may comply with the statutory requirement in KRS Chapter 349 for the protection of underground fresh water zones of the commonwealth.
(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 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 content 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 will affect operators that produce coal bed methane.
(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: Impacted companies and individuals will be required to become familiar with and conform to requirements designed to protect the commonwealth's environment and natural resources. Most energy exploration and development companies are accustomed to doing business in a regulated environment, and should not have great difficulty in conforming to these regulatory requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Division of Oil and Gas Conservation already has staff and procedures in place to address coal bed methane well production and injection.
(b) On a continuing basis: Same as above.
(c) What is the source of the funding to be used for the implementation and enforcement of the administrative regulation: The source of funding is 100% from the payment of fees authorized in these statutes.
(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 additional fees are associated with this regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.
(f) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation establishes the minimum standard for protecting fresh water zones during coal bed methane development. Lowering that standard for smaller entities would compromise environmental quality and is not in the best interests of the commonwealth.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Division of Oil and Gas Conservation
(Amended After Comments)


RELATES TO: KRS 349.015
STATUTORY AUTHORITY: KRS 349.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 authorizes the Department for Natural Resources to promulgate all rules, administrative regulations, and amendments to implement the provisions of KRS Chapter 349, governing coal bed methane wells. This administrative regulation establishes requirements for uniformity and clarity in the identification of well locations in order to assure compliance with KRS 349.015 [is intended to assure compliance with KRS 349.015 in establishing requirements for uniformity and clarity in the identification of well locations].

Section 1. Applicability. This administrative regulation shall apply [applies] only to coal bed methane-producing operations.
Section 2. Certification of Plats. Location plats for wells proposed to be drilled pursuant to KRS Chapter 349 shall be prepared by a licensed land surveyor and certified by an engineer registered in Kentucky. If any plat submitted by an applicant is determined by the department to be materially inaccurate or incomplete, the department may require that a new plat be prepared and submitted.

Section 3. Distance from Buildings. A coal bed methane well shall not be drilled within 150 feet measured horizontally from the surface location of the well bore to any [of-aa] occupied building, unless the owner of the building has executed a written waiver consenting to the well being drilled closer than 150 feet. The surveyor preparing the plat for a permit shall indicate the location of a proposed well site relative to all buildings within 150 feet of that well site. If an owner of a building located within 150 feet of a proposed well site waives the 150 foot distance requirement, a copy of the executed waiver shall accompany the application for permit. A waiver shall not be transferable unless it contains an express provision that it is transferable.

Section 4. Proposed Location Plat. A separate location plat shall be submitted with each application to drill, deepen or reopen a well. A copy of the plat shall be attached to the "Notice of Application for a Coal Bed Methane Well," Form CBM-1, as submitted to the relevant parties pursuant to KRS 349.016(2), (3), (4), or (7). Copies of these notices and the certified receipts shall be attached, along with the plat, to the "Coal Bed Methane Well Permit Application," Form CBM-2, when submitting to the department for permit request.

Section 5. As-Drilled Plat. An as-drilled plat required by KRS 349.015(8) shall be submitted within fifteen (15) calendar days after completion of the coal bed methane well.

Section 6. Plat Requirements. A location plat for wells proposed to be drilled pursuant to the provisions of KRS Chapter 349 shall be prepared in the following manner:

1. It shall be legible and submitted on paper eight by one-half (12) by fourteen (14) inches.

2. The location of the proposed well shall be shown relative to the two (2) nearest boundaries of mineral ownership, including any subdivision of the lease. A plat shall also indicate all permitted and producing coal bed methane wells and oil and gas wells within 1,500 feet of the proposed well site. The distances shall be clearly shown in feet.

3. The location of the proposed well shall be shown on the plat, by bearing and distance, relative to two (2) permanent points/monuments that appear on the applicable USGS 7.5 minute topographic quadrangle map, which permanent points/monuments include road intersections, bench marks, and buildings.

4. The location of the well site shall be prepared with reference to all of the following: the Gatter Coordinate system, latitude and longitude, and the single zone state plane coordinate system.

5. The elevation of the well site shall be determined by instrument and calculation. Estimated topographic elevations shall not be acceptable.

6. The plat shall be prepared to a scale of one (1) inch equals 100, 200, 300, 400, 500 or 600 feet.

Section 7. Additional Requirements. In addition to the data required in Section 6 of this administrative regulation, location plats shall include the following information:

1. Operator;
2. Farm or lease name;
3. Well number;
4. County;
5. Scale at which the plat is drawn;
6. North direction;
7. Legend:
   - Proposed well site
   - Oil well
   - Gas well
   - Coal bed methane well
   - Injection well
   - Plugged well
   - Abandoned well, not plugged
   - Data of preparation of plat;
   - Name of the topographic quadrangle map on which the well site is located;
   - Owners, lessors and lessees of minerals on tracts which are offset by the proposed well;
   - Certification in the following form: "I hereby certify that the above plat is accurate and correct and satisfies the requirements of 805 KAR 9:020 to the best of my knowledge and belief."; and [ ]
   - Certification shall be followed by the written signature of the person preparing the plat, his or her [his/her] mailing address, registration number, and telephone number.

Section 8. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Notice of Application for a Coal Bed Methane Well," Form CBM-1, January 2005, Division of Oil and Gas Conservation, [is incorporated by reference as Form CBM-1]; and
(b) "Coal Bed Methane Well Permit Application," Form CBM-2, January 2005, Division of Oil and Gas Conservation [, is incorporated by reference as Form CBM-2].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, Division of Oil and Gas Conservation, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2005 at 2 p.m.
CONTACT PERSON: Rick Bender, Director, Department for Natural Resources, Division of Oil and Gas Conservation, P. O. Box 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0147, fax (502) 573-0152.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Rick Bender

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes standards for uniformity and clarity in identifying well locations. It also establishes requirements for the preparation of plats.
(b) The necessity of this administrative regulation: With the passage of legislation in the 2004 GA, in which the production of coal bed methane was encouraged, administrative regulations are necessary to ensure uniformity and clarity in well location and well identity. This administrative regulation will facilitate compliance with KRS 349.015 by providing stakeholders clear standards for siting wells and submitting plats.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 349:115 authorizes the Department for Natural Resources to adopt all rules, administrative regulations, and amendments to implement the provisions of KRS Chapter 349 governing coal bed methane wells. It is the purpose of this administrative regulation to provide for the protection of the property rights of persons living or conducting business near such wells. The regulation is intended to ensure compliance with KRS 349.015.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation creates standards whereby coal bed methane producers in the Commonwealth may comply with the intent of the statutory requirements of KRS Chapter 349, in order to protect the structural integrity of buildings and the property rights of near neighbors.

(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 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 statute;

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect companies that will produce coal bed methane.

(3) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: Companies will be required to submit well location plates when they apply for drilling permits and pay permit fees, pursuant to KRS Chapter 349. There will be preparation and planning required to meet the significant requirements established in this administrative regulation. The Division of Oil and Gas Conservation will permit the wells and inspect them to ensure they are in compliance with this administrative regulation.

(4) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Division of Oil and Gas Conservation already has staff and procedures in place for similar conventional oil and gas well permitting and plat requirements. No additional staff or costs are foreseen at this time for implementation or on a continuing basis.
(b) On a continuing basis: Same as above.

(5) 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 payment of fees authorized in the statutes.

(6) 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 additional fees are associated with this regulation.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

(8) TIERING: Is tiering applied? Tiering is not applied because the requirements to permit coal bed methane wells must apply equally to all coal bed methane production operations.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Division of Oil and Gas Conservation
(Updated After Comments)


RELATES TO: KRS 349.025
STATUTORY AUTHORITY: KRS 13A.100, 349.025(5), 349.115, 353.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 authorizes the Department for Natural Resources to promulgate all rules, administrative regulations, and amendments to implement the provisions of KRS Chapter 349, governing coal bed methane wells. KRS 349.025(5) requires the department to regulate the plugging of vertical and horizontal coal bed methane wells. This administrative regulation establishes [creates] the minimum acceptable standard to plug or temporarily cease production of a well drilled through coal-bearing strata.

Section 1. Requirement to Plug. Unless written permission is obtained from the department, no owner or operator shall allow any well drilled, converted to, or operated as a coal bed methane well to remain unplugged after that well is no longer used for the purpose for which it was drilled, converted, or operated. However, this administrative regulation shall not [nothing herein shall] prevent the department, upon application and for good cause shown, from issuing to an operator a temporary abandonment permit to leave a well unplugged for a period not exceeding two (2) years. The permission for temporary abandonment may be renewed at the end of the two (2) year period upon rapsubmission by the operator. A well for which a temporary abandonment permit has been issued shall be capped and capped in such a manner as to protect all potential coal bed methane zones, gas zones, and coal beds, and vented in such a manner as to prevent the accumulation of gas in the borehole.

Section 2. Notice of Plugging. Prior to abandonment of a well drilled through a workable coal bed the well operator shall notify, by registered mail, the owner or owners of record and lessee(s) of record and operators of the coal bed(s) and the proper oil and gas inspector of the intention to plug and abandon the well. The notice shall comply with KRS 349.025(1). The time fixed for the plugging of the well, as provided in the notice, shall include both the hour and the day at which the work of the plugging may be commenced. The notice shall be on Form CBM-9 entitled "Notice of Intention to Plug and Abandon Well." A representative or representatives of the coal operator or owner and of the department may be present at the plugging, in accordance with KRS 349.025(1) [The time shall be given in the notice of the well and its location, and the time at which the work of plugging will be commenced, the time not to be less than five (5) days after the date on which the notice is received, or, in due course, should be received, by the department. The notice shall be on Form CBM-9 entitled "Notice of Intention to Plug and Abandon a Well" as provided by the department. A representative or representatives of the coal operator or owner and of the department may be present at the plugging of the well. Whether or not such representatives appear, the well operator may proceed, at the time fixed, to plug the well. As used in this section, the word 'time' shall be both the hour and the day at which the work of plugging may be commenced].

Section 3. Manner of Plugging. If any well drilled through a workable coal bed is abandoned, it shall be at that time plugged to a point forty (40) feet below the lowest coal seam worked, in the following manner: The hole shall be filled with cement to other nonporous material, as approved by the director as material that will make an effective seal from the bottom to the surface.

Section 4. Domestic Water Well Use. If the well to be plugged may safely be used for a fresh water well, and this [such] utilization is desired by the landowner and is acceptable to the operator or operator of all coal-bearing strata beneath the location of that well, it shall be required to [need not] be filled above the required sealing plug set below fresh water. [If provided, that] Written authority for this [such] use is secured from the landowner, and coal owner or operator, and filed with the department. In order for the operator to be released of any further plugging responsibility, the operator shall provide to the department evidence of compliance with the domestic water well construction requirements pursuant to 401 KAR 6:310 as administered by the Department for Environmental Protection.

Section 5. Plugging Affidavit. Within thirty (30) days after the plugging of any well has been accomplished, the well owner or operator shall file a plugging report with the department, setting forth in detail the method used in plugging the well. The report shall be made on Form CBM-9 as provided by the department. One (1) copy of the affidavit shall be retained by the well operator, one (1) copy shall be delivered to each coal operator and each owner, and one (1) copy shall be delivered to each coal operator and each owner.

Section 6. Plugging Method. (1) The operator shall have the option to select the method of placing cement in the hole by: (a) Dump bailer; (b) Pumping through tubing; (c) Pump and plug; or (d) Other method approved by the director upon letter application. If the method is determined to be safe for the environment and necessary due to the operator's inability to use the methods in paragraphs (a) through (c) or if the method is determined to be safe for the environment and as effective as the
use of cement.

(2) The operator shall ensure that when the hole is being filled with cement or other nonporous material, as approved by the director, that the hole does not bridge and prohibit the filling of the entire hole as required. Should the hole bridge and prohibit the filling the entire hole, the operator shall cease plugging and clean out by drilling out or washing down the well bore.

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "Notice of Intention to Plug and Abandon Well," Form CBM-8, January 2005, Division of Oil and Gas Conservation [incorporated by reference as Form CBM-8]; and
(b) "Affidavit to Time and Manner of Plugging and Filling Well," Form CBM-9, January 2005, Division of Oil and Gas Conservation, [incorporated by reference as Form CBM-9].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, Division of Oil and Gas Conservation, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJUANA S. WILCHER, Secretary
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2005 at 2 p.m.
CONTACT PERSON: Rick Bender, Director, Department for Natural Resources, Division of Oil and Gas Conservation, P. O. Box 2244, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-0147, fax (502) 573-0152.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes requirements for plugging a well no longer used for the purpose for which it was drilled, converted or operated.
(b) The necessity of this administrative regulation: With the passage of legislation in the 2004 GA encouraging the production of coal bed methane, plugging regulations are necessary to protect all potential coal bed methane zones, gas zones, and coal beds, and to prevent the accumulation of gas in the borehole.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 349.115 authorizes the Department for Natural Resources to adopt all rules, administrative regulations, and amendments to implement the provisions of KRS 349 governing coal bed methane wells. It is the purpose of this administrative regulation to protect all potential coal bed methane zones, gas zones, coal beds, and to prevent the accumulation of gas in the borehole by ensuring the proper plugging of coal bed methane wells upon abandonment.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation creates standards whereby coal bed methane producers in the commonwealth may comply with well plugging requirements of KRS 349, in order to protect all potential coal bed methane zones, gas zones and coal beds, and to prevent the accumulation of gas in the borehole.

(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 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: This administrative regulation will affect companies that will produce coal bed methane.

(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: Impacted companies and individuals will be required to become familiar with and conform to the plugging requirements designed to protect the commonwealth’s environment and natural resources. Most energy exploration and development companies are accustomed to doing business in a regulated environment, and should not have great difficulty in conforming to these regulatory requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Division of Oil and Gas Conservation already has staff and procedures in place for similar conventional oil and gas well plugging requirements. No additional staff or costs are foreseen at this time for implementation or on a continuing basis.
(b) On a continuing basis: Same as above.
(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 payment of fees authorized in the statutes.

(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 additional fees are associated with this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation establishes the minimum standards for plugging coal bed methane wells upon abandonment. Lowering the standards for smaller entities would compromise environmental quality and is not in the best interests of the commonwealth.
PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 15, 2005

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (19) 164.753(2), 34 C.F.R. 682.410(b)(10), 20 U.S.C. 1071-1087-2, 1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20 U.S.C. 1095(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2), the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with 20 U.S.C. 1071 through 1087-2. 20 U.S.C. 1095a permits a student loan guarantee agency to garnish the disposable pay of a borrower to recover a loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, notwithstanding a provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(19) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation establishes the procedures for implementing wage garnishment in accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mailing addressed to the debtor at the residence or employment location last known to the authority. The notice shall include at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an order for withholding of disposable pay;

(e) A statement of the right to dispute the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay;

(4) An amount shall not be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) Establishment of a written repayment schedule in accordance with subsection (3)(g) of this section shall be deemed, for purposes of subsection (3)(e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(6) Service of the notice required by subsection (3) of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice shall otherwise be evidenced by affidavit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice required by Section 1(3) of this administrative regulation, files with the authority a written request for a hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board other than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from a case in which he cannot afford a fair and impartial hearing or consideration.

1. A party shall request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include the following:

a. Participating in an ex parte communication which would prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceeding;

c. Having a personal bias toward a party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) A dispute hearing shall be conducted in Franklin County or another location agreed to by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of an ex parte matter specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with a party to the hearing concerning a substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a record-
ing or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:
1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Preliminary observations and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition for review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:
1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:
1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
2. a. Uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law;
b. Reject or modify, in whole or in part, the hearing officer's decision; or
c. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:
(i) In violation of constitutional or statutory provisions;
(ii) In excess of the statutory authority of the agency;
(iii) Without support of substantial evidence on the whole record;
(iv) Arbitrary, capricious, or characterized by abuse of discretion; or
(v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(b) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law.

4. The remedies provided in this section shall not:
(a) Preclude the use of other judicial or administrative remedies available to the authority under state or federal law; and
(b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue subpoena for the production of a document or attendance of a witness.

(b) Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

2. Not less than fifteen (15) business days prior to the hearing, the parties shall:
1. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
2. Discuss the possibility of informal resolution of the dispute;
3. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence;
4. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3. A. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed by Section 2(2) of this administrative regulation.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

7. Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d) The hearing officer, may
depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay, shall exist if there is:

1. Noncompliance with this subsection;
2. Failure of the authority to:
   a. Timely appoint a hearing officer; or
   b. Respond to a request for inspection of records; or
3. Failure of the debtor to submit information in accordance with paragraph (b) of this subsection.

(3) Order of proceeding:

(a) The hearing officer shall:
1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;
3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(c) and of this section;
4. Solicit from the parties and dispose of any objections or motions;
5. Accept into evidence any documentary evidence not objected to;
6. Solicit opening statements; and
7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.
1. The hearing officer shall not admit evidence that is inadmissible as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the commonwealth.
2. The statements or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.
3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.
4. A copy of a document shall be admissible if:
   a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
   b. It is admitted without objection.
5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:
1. May take official notice of:
   a. Statutes and administrative regulations;
   b. Facts which are not in dispute; and
   c. Generally-recognized technical or scientific facts;
2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
3. Shall give each party an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

5. Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.


(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontested facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall:
   1. Consider the matter; and
   2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:
   1. Circumstances have changed or new information is available; or
   2. The prior decision:
      a. Substantially disregarded or ignored the defense; or
      b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 525(a)(6), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or
(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of an amount of disposable pay shall constitute an extreme financial hardship if:
   a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$9,570 (9,340)</td>
</tr>
<tr>
<td>2</td>
<td>$12,830 (12,480)</td>
</tr>
<tr>
<td>3</td>
<td>$16,090 (16,670)</td>
</tr>
<tr>
<td>4</td>
<td>$19,350 (18,860)</td>
</tr>
<tr>
<td>5</td>
<td>$22,610 (22,030)</td>
</tr>
<tr>
<td>6</td>
<td>$25,870 (26,210)</td>
</tr>
<tr>
<td>7</td>
<td>$29,130 (28,390)</td>
</tr>
<tr>
<td>8</td>
<td>$32,390 (31,670)</td>
</tr>
<tr>
<td>Each additional person</td>
<td>Add $3,260 (3,180)</td>
</tr>
</tbody>
</table>

2. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause (b) of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2.596</td>
<td>2.675</td>
<td>3.101</td>
<td>2.962</td>
<td>3.466</td>
<td>3.478</td>
<td>2.837</td>
<td>2.527</td>
<td>1.809</td>
</tr>
<tr>
<td>Other lodging</td>
<td>365</td>
<td>153</td>
<td>159</td>
<td>138</td>
<td>190</td>
<td>258</td>
<td>408</td>
<td>605</td>
<td>1.360</td>
</tr>
<tr>
<td>Utilities, fuels, and public</td>
<td>1.161</td>
<td>1.412</td>
<td>1.855</td>
<td>2.194</td>
<td>2.363</td>
<td>2.720</td>
<td>2.884</td>
<td>3.201</td>
<td>3.870</td>
</tr>
<tr>
<td>Household services</td>
<td>99</td>
<td>98</td>
<td>538</td>
<td>327</td>
<td>464</td>
<td>418</td>
<td>575</td>
<td>660</td>
<td>1.875</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>385</td>
<td>293</td>
<td>346</td>
<td>456</td>
<td>466</td>
<td>480</td>
<td>542</td>
<td>658</td>
<td>871</td>
</tr>
<tr>
<td>Household furnishing and equipment</td>
<td>556</td>
<td>504</td>
<td>577</td>
<td>660</td>
<td>871</td>
<td>1,280</td>
<td>1,424</td>
<td>1,686</td>
<td>3.058</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
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<td>689</td>
<td>1,322</td>
<td>986</td>
<td>1,610</td>
<td>2,398</td>
<td>3,737</td>
<td>4,362</td>
<td>5,337</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>371</td>
<td>320</td>
<td>463</td>
<td>591</td>
<td>771</td>
<td>1,042</td>
<td>1,170</td>
<td>1,472</td>
<td>1.838</td>
</tr>
<tr>
<td>Vehicle maintenance and parts</td>
<td>170</td>
<td>231</td>
<td>262</td>
<td>386</td>
<td>449</td>
<td>546</td>
<td>611</td>
<td>752</td>
<td>1,008</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>296</td>
<td>270</td>
<td>425</td>
<td>526</td>
<td>647</td>
<td>756</td>
<td>1,005</td>
<td>1,189</td>
<td>1.878</td>
</tr>
<tr>
<td>Vehicle lease, license and other charges</td>
<td>159</td>
<td>104</td>
<td>192</td>
<td>238</td>
<td>249</td>
<td>372</td>
<td>587</td>
<td>675</td>
<td>1,196</td>
</tr>
<tr>
<td>Public transportation</td>
<td>284</td>
<td>304</td>
<td>285</td>
<td>301</td>
<td>463</td>
<td>432</td>
<td>533</td>
<td>663</td>
<td>1.054</td>
</tr>
</tbody>
</table>

[Debtor's Available Resources | Less than $6,000 to $9,999 | $10,000 to $14,999 | $15,000 to $19,999 | $20,000 to $29,999 | $30,000 to $39,999 | $40,000 to $49,999 | $50,000 to $59,999 | $70,000 and over]
### VOLUME 31, NUMBER 11 – May 1, 2005

<table>
<thead>
<tr>
<th>Shares</th>
<th>$5,000</th>
<th>$9,999</th>
<th>$14,999</th>
<th>$19,999</th>
<th>$29,999</th>
<th>$39,999</th>
<th>$49,999</th>
<th>$69,999</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>1.218</td>
<td>1.167</td>
<td>1.106</td>
<td>1.060</td>
<td>1.023</td>
<td>1.000</td>
<td>0.983</td>
<td>0.971</td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>2.496</td>
<td>2.627</td>
<td>2.830</td>
<td>3.162</td>
<td>3.181</td>
<td>3.189</td>
<td>3.252</td>
<td>3.325</td>
</tr>
<tr>
<td>Other-lodging</td>
<td>441</td>
<td>121</td>
<td>170</td>
<td>158</td>
<td>258</td>
<td>303</td>
<td>439</td>
<td>676</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>4.317</td>
<td>4.435</td>
<td>2.005</td>
<td>2.153</td>
<td>2.418</td>
<td>2.703</td>
<td>2.726</td>
<td>3.162</td>
</tr>
<tr>
<td>Household services</td>
<td>396</td>
<td>152</td>
<td>359</td>
<td>324</td>
<td>366</td>
<td>487</td>
<td>459</td>
<td>612</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>361</td>
<td>360</td>
<td>307</td>
<td>418</td>
<td>425</td>
<td>482</td>
<td>635</td>
<td>822</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>865</td>
<td>534</td>
<td>603</td>
<td>606</td>
<td>718</td>
<td>1,162</td>
<td>1,403</td>
<td>1,696</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,681</td>
<td>614</td>
<td>1,732</td>
<td>1,006</td>
<td>1,732</td>
<td>2,297</td>
<td>2,374</td>
<td>4,484</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>449</td>
<td>357</td>
<td>461</td>
<td>601</td>
<td>787</td>
<td>990</td>
<td>1,098</td>
<td>1,391</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>243</td>
<td>234</td>
<td>324</td>
<td>371</td>
<td>441</td>
<td>601</td>
<td>1,107</td>
<td>664</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>292</td>
<td>285</td>
<td>426</td>
<td>555</td>
<td>619</td>
<td>727</td>
<td>1,004</td>
<td>1,091</td>
</tr>
<tr>
<td>Vehicle lease, license and other charges</td>
<td>456</td>
<td>400</td>
<td>227</td>
<td>474</td>
<td>270</td>
<td>366</td>
<td>585</td>
<td>766</td>
</tr>
<tr>
<td>Public transportation</td>
<td>300</td>
<td>227</td>
<td>290</td>
<td>343</td>
<td>363</td>
<td>478</td>
<td>549</td>
<td>627</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed necessary:

<table>
<thead>
<tr>
<th>Location</th>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
<th>Pittsburgh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>7,640</td>
<td>6,522</td>
<td>6,318</td>
<td>4,552</td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>4,066</td>
<td>1,867</td>
<td>3,203</td>
<td>1,481</td>
</tr>
<tr>
<td>Other lodging</td>
<td>696</td>
<td>454</td>
<td>623</td>
<td>485</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,055</td>
<td>3,105</td>
<td>2,267</td>
<td>2,902</td>
</tr>
<tr>
<td>Household services</td>
<td>1,113</td>
<td>789</td>
<td>772</td>
<td>639</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>553</td>
<td>517</td>
<td>407</td>
<td>532</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,796</td>
<td>1,527</td>
<td>1,212</td>
<td>1,708</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,928</td>
<td>2,399</td>
<td>3,518</td>
<td>2,769</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,101</td>
<td>1,142</td>
<td>1,159</td>
<td>1,164</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,658</td>
<td>2,556</td>
<td>2,074</td>
<td>2,839</td>
</tr>
<tr>
<td>Public transportation</td>
<td>1,042</td>
<td>374</td>
<td>424</td>
<td>399</td>
</tr>
</tbody>
</table>

3a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
<td>1,591</td>
<td>623</td>
<td>1,725</td>
<td>2,541</td>
<td>2,406</td>
<td>3,481</td>
<td>4,645</td>
<td>6,051</td>
<td>10,228</td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>2,109</td>
<td>2,254</td>
<td>2,215</td>
<td>2,220</td>
<td>2,402</td>
<td>1,941</td>
<td>1,974</td>
<td>1,557</td>
<td>686</td>
</tr>
<tr>
<td>Other lodging</td>
<td>402</td>
<td>183</td>
<td>174</td>
<td>189</td>
<td>293</td>
<td>228</td>
<td>291</td>
<td>418</td>
<td>1,278</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,444</td>
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<td>1,886</td>
<td>2,275</td>
<td>2,389</td>
<td>2,643</td>
<td>2,777</td>
<td>3,140</td>
<td>3,803</td>
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<tr>
<td>Household operations services</td>
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<td>115</td>
<td>258</td>
<td>262</td>
<td>346</td>
<td>381</td>
<td>464</td>
<td>690</td>
<td>1,147</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>240</td>
<td>259</td>
<td>340</td>
<td>445</td>
<td>444</td>
<td>540</td>
<td>686</td>
<td>1,262</td>
<td>978</td>
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<tr>
<td>Household furnishings and equipment</td>
<td>619</td>
<td>388</td>
<td>533</td>
<td>807</td>
<td>1,121</td>
<td>1,149</td>
<td>1,390</td>
<td>1,865</td>
<td>3,543</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,699</td>
<td>1,352</td>
<td>2,086</td>
<td>1,684</td>
<td>2,654</td>
<td>3,436</td>
<td>4,024</td>
<td>5,066</td>
<td>7,362</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>652</td>
<td>510</td>
<td>630</td>
<td>657</td>
<td>1,010</td>
<td>1,312</td>
<td>1,400</td>
<td>1,653</td>
<td>2,032</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>292</td>
<td>231</td>
<td>320</td>
<td>441</td>
<td>449</td>
<td>559</td>
<td>869</td>
<td>873</td>
<td>1,091</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>213</td>
<td>138</td>
<td>132</td>
<td>225</td>
<td>285</td>
<td>400</td>
<td>426</td>
<td>662</td>
<td>1,077</td>
</tr>
</tbody>
</table>

-1834-


### VOLUME 31, NUMBER 11 – May 1, 2005

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
<td>2,500</td>
<td>10,901</td>
<td>9,101</td>
<td>6,901</td>
<td>5,601</td>
<td>4,301</td>
<td>3,101</td>
</tr>
<tr>
<td>Rented-dwellings</td>
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<td>4,561</td>
<td>2,861</td>
<td>2,261</td>
<td>1,961</td>
<td>1,661</td>
<td>1,361</td>
</tr>
<tr>
<td>Other lodging</td>
<td>666</td>
<td>1,222</td>
<td>1,006</td>
<td>806</td>
<td>706</td>
<td>506</td>
<td>306</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,499</td>
<td>1,410</td>
<td>806</td>
<td>426</td>
<td>226</td>
<td>126</td>
<td>60</td>
</tr>
<tr>
<td>Household operations services</td>
<td>412</td>
<td>244</td>
<td>286</td>
<td>444</td>
<td>434</td>
<td>424</td>
<td>312</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>301</td>
<td>247</td>
<td>276</td>
<td>327</td>
<td>421</td>
<td>466</td>
<td>557</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>784</td>
<td>428</td>
<td>555</td>
<td>488</td>
<td>408</td>
<td>348</td>
<td>214</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>1,306</td>
<td>1,505</td>
<td>2,169</td>
<td>2,946</td>
<td>3,886</td>
<td>4,863</td>
<td>6,633</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>733</td>
<td>738</td>
<td>783</td>
<td>834</td>
<td>885</td>
<td>936</td>
<td>1,210</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>348</td>
<td>320</td>
<td>530</td>
<td>404</td>
<td>668</td>
<td>774</td>
<td>936</td>
</tr>
<tr>
<td>Vehicle-insurance</td>
<td>270</td>
<td>247</td>
<td>374</td>
<td>522</td>
<td>689</td>
<td>860</td>
<td>1,006</td>
</tr>
<tr>
<td>Vehicle-lease, license, and other charges</td>
<td>316</td>
<td>114</td>
<td>168</td>
<td>210</td>
<td>301</td>
<td>368</td>
<td>628</td>
</tr>
<tr>
<td><strong>Public transportation</strong></td>
<td>115</td>
<td>98</td>
<td>150</td>
<td>193</td>
<td>217</td>
<td>188</td>
<td>295</td>
</tr>
</tbody>
</table>

**b.** If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Metropolitan Area</th>
<th>Chicago</th>
<th>Detroit</th>
<th>Milwaukee</th>
<th>Minneapolis</th>
<th>St. Paul</th>
<th>Cleveland</th>
<th>Cincinnati</th>
<th>St. Louis</th>
<th>Kansas City</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
<td>7,333</td>
<td>6,504</td>
<td>5,594</td>
<td>7,365</td>
<td>5,349</td>
<td>4,246</td>
<td>6,530</td>
<td>5,463</td>
<td></td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>2,344</td>
<td>1,717</td>
<td>2,696</td>
<td>2,777</td>
<td>1,565</td>
<td>1,384</td>
<td>1,977</td>
<td>2,007</td>
<td></td>
</tr>
<tr>
<td>Other lodging</td>
<td>612</td>
<td>593</td>
<td>596</td>
<td>833</td>
<td>348</td>
<td>335</td>
<td>699</td>
<td>378</td>
<td></td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,190</td>
<td>2,911</td>
<td>2,558</td>
<td>2,766</td>
<td>3,079</td>
<td>2,520</td>
<td>3,083</td>
<td>3,329</td>
<td></td>
</tr>
<tr>
<td>Household services</td>
<td>876</td>
<td>732</td>
<td>622</td>
<td>849</td>
<td>472</td>
<td>536</td>
<td>872</td>
<td>718</td>
<td></td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>624</td>
<td>530</td>
<td>601</td>
<td>730</td>
<td>432</td>
<td>510</td>
<td>434</td>
<td>560</td>
<td></td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,080</td>
<td>1,442</td>
<td>1,796</td>
<td>2,531</td>
<td>1,089</td>
<td>1,741</td>
<td>1,587</td>
<td>1,567</td>
<td></td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>3,570</td>
<td>3,955</td>
<td>3,002</td>
<td>4,209</td>
<td>3,716</td>
<td>3,917</td>
<td>4,321</td>
<td>4,255</td>
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</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,325</td>
<td>1,354</td>
<td>1,284</td>
<td>1,400</td>
<td>1,107</td>
<td>1,522</td>
<td>1,281</td>
<td>1,559</td>
<td></td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,410</td>
<td>3,229</td>
<td>2,142</td>
<td>3,007</td>
<td>2,531</td>
<td>2,466</td>
<td>2,545</td>
<td>2,655</td>
<td></td>
</tr>
<tr>
<td><strong>Public transportation</strong></td>
<td>657</td>
<td>468</td>
<td>368</td>
<td>564</td>
<td>349</td>
<td>259</td>
<td>322</td>
<td>324</td>
<td></td>
</tr>
</tbody>
</table>

**4.a.** If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause **b** of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Debtors' Available Resources

<table>
<thead>
<tr>
<th>Resource Category</th>
<th>Less than $6,000</th>
<th>$6,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,365</td>
<td>1,344</td>
<td>1,342</td>
<td>1,831</td>
<td>2,423</td>
<td>3,023</td>
<td>4,185</td>
<td>5,423</td>
<td>10,293</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,008</td>
<td>1,783</td>
<td>1,846</td>
<td>2,079</td>
<td>2,209</td>
<td>2,367</td>
<td>1,950</td>
<td>1,546</td>
<td>1,158</td>
</tr>
<tr>
<td>Other lodging</td>
<td>166</td>
<td>86</td>
<td>94</td>
<td>100</td>
<td>119</td>
<td>261</td>
<td>288</td>
<td>371</td>
<td>1,055</td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,619</td>
<td>1,850</td>
<td>2,093</td>
<td>2,256</td>
<td>2,521</td>
<td>2,680</td>
<td>3,030</td>
<td>3,293</td>
<td>4,056</td>
</tr>
<tr>
<td>Household services</td>
<td>128</td>
<td>203</td>
<td>241</td>
<td>452</td>
<td>477</td>
<td>636</td>
<td>743</td>
<td>803</td>
<td>1,142</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>347</td>
<td>272</td>
<td>291</td>
<td>378</td>
<td>350</td>
<td>484</td>
<td>450</td>
<td>675</td>
<td>986</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>557</td>
<td>468</td>
<td>456</td>
<td>613</td>
<td>828</td>
<td>1,002</td>
<td>1,531</td>
<td>1,561</td>
<td>3,080</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>973</td>
<td>850</td>
<td>1,735</td>
<td>2,620</td>
<td>2,741</td>
<td>3,482</td>
<td>3,759</td>
<td>5,587</td>
<td>6,853</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>627</td>
<td>577</td>
<td>628</td>
<td>906</td>
<td>1,102</td>
<td>1,319</td>
<td>1,456</td>
<td>1,880</td>
<td>1,958</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>311</td>
<td>240</td>
<td>286</td>
<td>397</td>
<td>532</td>
<td>583</td>
<td>700</td>
<td>787</td>
<td>1,067</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>340</td>
<td>319</td>
<td>481</td>
<td>592</td>
<td>758</td>
<td>914</td>
<td>1,071</td>
<td>1,176</td>
<td>1,432</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>121</td>
<td>92</td>
<td>106</td>
<td>118</td>
<td>179</td>
<td>218</td>
<td>397</td>
<td>464</td>
<td>700</td>
</tr>
<tr>
<td>Public transportation</td>
<td>126</td>
<td>99</td>
<td>97</td>
<td>126</td>
<td>121</td>
<td>162</td>
<td>205</td>
<td>308</td>
<td>644</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary.

### Metropolitan Areas

<table>
<thead>
<tr>
<th>Area</th>
<th>Washington D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas Forth Worth</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,641</td>
<td>6,102</td>
<td>6,383</td>
<td>6,685</td>
<td>5,561</td>
<td>5,065</td>
<td>5,417</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,958</td>
<td>2,036</td>
<td>2,024</td>
<td>3,155</td>
<td>1,889</td>
<td>2,528</td>
<td>2,719</td>
</tr>
<tr>
<td>Other lodging</td>
<td>589</td>
<td>510</td>
<td>376</td>
<td>321</td>
<td>350</td>
<td>516</td>
<td>379</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,067</td>
<td>2,767</td>
<td>3,421</td>
<td>3,068</td>
<td>3,021</td>
<td>3,538</td>
<td>3,284</td>
</tr>
<tr>
<td>Household services</td>
<td>932</td>
<td>598</td>
<td>699</td>
<td>991</td>
<td>848</td>
<td>794</td>
<td>1,030</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>648</td>
<td>588</td>
<td>401</td>
<td>524</td>
<td>388</td>
<td>559</td>
<td>586</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,028</td>
<td>1,199</td>
<td>1,243</td>
<td>1,434</td>
<td>1,288</td>
<td>1,627</td>
<td>1,707</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,374</td>
<td>1,852</td>
<td>3,610</td>
<td>3,709</td>
<td>3,546</td>
<td>4,393</td>
<td>5,243</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,318</td>
<td>1,139</td>
<td>1,222</td>
<td>1,324</td>
<td>1,142</td>
<td>1,510</td>
<td>1,467</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,454</td>
<td>2,215</td>
<td>2,289</td>
<td>2,688</td>
<td>2,407</td>
<td>3,018</td>
<td>2,794</td>
</tr>
<tr>
<td>Public transportation</td>
<td>707</td>
<td>409</td>
<td>280</td>
<td>447</td>
<td>156</td>
<td>345</td>
<td>386</td>
</tr>
</tbody>
</table>

### Annual Expenditures

<table>
<thead>
<tr>
<th>Category</th>
<th>Washington D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas Forth Worth</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,252</td>
<td>5,646</td>
<td>6,397</td>
<td>6,321</td>
<td>5,228</td>
<td>5,849</td>
<td>4,961</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,537</td>
<td>2,056</td>
<td>2,175</td>
<td>3,228</td>
<td>2,023</td>
<td>2,669</td>
<td>2,276</td>
</tr>
<tr>
<td>Other lodging</td>
<td>766</td>
<td>694</td>
<td>422</td>
<td>274</td>
<td>501</td>
<td>609</td>
<td>451</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,954</td>
<td>2,674</td>
<td>3,420</td>
<td>3,038</td>
<td>2,946</td>
<td>3,486</td>
<td>3,262</td>
</tr>
<tr>
<td>Household services</td>
<td>977</td>
<td>644</td>
<td>869</td>
<td>976</td>
<td>829</td>
<td>902</td>
<td>4,198</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>578</td>
<td>626</td>
<td>378</td>
<td>647</td>
<td>374</td>
<td>563</td>
<td>682</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,054</td>
<td>1,299</td>
<td>1,340</td>
<td>1,438</td>
<td>1,423</td>
<td>1,765</td>
<td>1,881</td>
</tr>
<tr>
<td>VOLUME 31, NUMBER 11 – May 1, 2005</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Vehicle purchases (net-outlay)</strong></td>
<td>3,266</td>
<td>1,643</td>
<td>3,604</td>
<td>3,097</td>
<td>4,886</td>
<td>5,160</td>
<td>4,473</td>
</tr>
<tr>
<td><strong>Gasoline and motor oil</strong></td>
<td>1,242</td>
<td>1,482</td>
<td>1,276</td>
<td>1,316</td>
<td>1,219</td>
<td>1,506</td>
<td>1,625</td>
</tr>
<tr>
<td><strong>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</strong></td>
<td>2,334</td>
<td>1,970</td>
<td>2,392</td>
<td>2,781</td>
<td>2,518</td>
<td>3,033</td>
<td>3,044</td>
</tr>
<tr>
<td><strong>Public transportation</strong></td>
<td>74</td>
<td>313</td>
<td>266</td>
<td>424</td>
<td>227</td>
<td>352</td>
<td>494</td>
</tr>
</tbody>
</table>

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary.

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $10,000</th>
<th>$10,000 to $15,000</th>
<th>$15,000 to $20,000</th>
<th>$20,000 to $30,000</th>
<th>$30,000 to $40,000</th>
<th>$40,000 to $50,000</th>
<th>$50,000 to $70,000</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>2,588</td>
<td>1,284</td>
<td>1,784</td>
<td>2,086</td>
<td>3,158</td>
<td>4,431</td>
<td>5,123</td>
<td>7,374</td>
<td>13,009</td>
</tr>
<tr>
<td>Renting dwelling</td>
<td>2,512</td>
<td>2,609</td>
<td>3,259</td>
<td>3,735</td>
<td>3,330</td>
<td>3,448</td>
<td>3,657</td>
<td>3,006</td>
<td>2,156</td>
</tr>
<tr>
<td>Other lodging</td>
<td>422</td>
<td>218</td>
<td>209</td>
<td>292</td>
<td>283</td>
<td>270</td>
<td>352</td>
<td>472</td>
<td>1,193</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,570</td>
<td>1,262</td>
<td>1,588</td>
<td>2,172</td>
<td>2,055</td>
<td>2,304</td>
<td>2,530</td>
<td>2,978</td>
<td>3,653</td>
</tr>
<tr>
<td>Household services</td>
<td>258</td>
<td>189</td>
<td>346</td>
<td>292</td>
<td>472</td>
<td>516</td>
<td>641</td>
<td>806</td>
<td>1,752</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>297</td>
<td>254</td>
<td>331</td>
<td>399</td>
<td>521</td>
<td>461</td>
<td>504</td>
<td>702</td>
<td>888</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>769</td>
<td>478</td>
<td>733</td>
<td>810</td>
<td>1,173</td>
<td>1,379</td>
<td>1,572</td>
<td>2,225</td>
<td>3,579</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>2,229</td>
<td>1,481</td>
<td>1,644</td>
<td>1,741</td>
<td>2,450</td>
<td>3,539</td>
<td>4,517</td>
<td>5,875</td>
<td>5,742</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>750</td>
<td>565</td>
<td>757</td>
<td>749</td>
<td>1,078</td>
<td>1,381</td>
<td>1,455</td>
<td>1,763</td>
<td>2,126</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>409</td>
<td>305</td>
<td>392</td>
<td>626</td>
<td>644</td>
<td>724</td>
<td>907</td>
<td>1,084</td>
<td>1,476</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>353</td>
<td>361</td>
<td>419</td>
<td>621</td>
<td>727</td>
<td>923</td>
<td>1,046</td>
<td>1,171</td>
<td>1,468</td>
</tr>
<tr>
<td>Vehicle license, and other charges</td>
<td>312</td>
<td>110</td>
<td>171</td>
<td>193</td>
<td>288</td>
<td>311</td>
<td>462</td>
<td>693</td>
<td>1,119</td>
</tr>
<tr>
<td>Public transportation</td>
<td>197</td>
<td>153</td>
<td>172</td>
<td>241</td>
<td>296</td>
<td>377</td>
<td>386</td>
<td>584</td>
<td>886</td>
</tr>
</tbody>
</table>

5.b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $10,000</th>
<th>$10,000 to $15,000</th>
<th>$15,000 to $20,000</th>
<th>$20,000 to $30,000</th>
<th>$30,000 to $40,000</th>
<th>$40,000 to $50,000</th>
<th>$50,000 to $70,000</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Annual Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>2,085</td>
<td>1,480</td>
<td>1,949</td>
<td>1,997</td>
<td>2,882</td>
<td>4,238</td>
<td>5,101</td>
<td>7,333</td>
<td>12,826</td>
</tr>
<tr>
<td>Renting dwelling</td>
<td>2,541</td>
<td>2,662</td>
<td>2,957</td>
<td>3,690</td>
<td>3,410</td>
<td>3,476</td>
<td>3,584</td>
<td>2,437</td>
<td>2,464</td>
</tr>
<tr>
<td>Other lodging</td>
<td>481</td>
<td>237</td>
<td>250</td>
<td>348</td>
<td>302</td>
<td>372</td>
<td>305</td>
<td>476</td>
<td>1,267</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,440</td>
<td>1,378</td>
<td>1,724</td>
<td>1,775</td>
<td>2,068</td>
<td>2,302</td>
<td>2,491</td>
<td>2,933</td>
<td>3,573</td>
</tr>
<tr>
<td>Household services</td>
<td>196</td>
<td>264</td>
<td>354</td>
<td>306</td>
<td>492</td>
<td>332</td>
<td>637</td>
<td>769</td>
<td>1,683</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>306</td>
<td>319</td>
<td>343</td>
<td>386</td>
<td>476</td>
<td>476</td>
<td>566</td>
<td>690</td>
<td>837</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>761</td>
<td>511</td>
<td>700</td>
<td>790</td>
<td>1,456</td>
<td>1,434</td>
<td>1,423</td>
<td>1,889</td>
<td>3,907</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>1,624</td>
<td>1,386</td>
<td>1,640</td>
<td>2,128</td>
<td>2,749</td>
<td>4,070</td>
<td>4,413</td>
<td>5,404</td>
<td>6,422</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>686</td>
<td>575</td>
<td>780</td>
<td>914</td>
<td>4,061</td>
<td>1,378</td>
<td>1,470</td>
<td>2,711</td>
<td>2,077</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>371</td>
<td>378</td>
<td>418</td>
<td>500</td>
<td>729</td>
<td>753</td>
<td>879</td>
<td>1,080</td>
<td>1,620</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>317</td>
<td>361</td>
<td>465</td>
<td>603</td>
<td>745</td>
<td>891</td>
<td>1,032</td>
<td>1,148</td>
<td>1,443</td>
</tr>
<tr>
<td>Vehicle license, and other charges</td>
<td>196</td>
<td>129</td>
<td>162</td>
<td>230</td>
<td>260</td>
<td>363</td>
<td>604</td>
<td>776</td>
<td>1,189</td>
</tr>
<tr>
<td>Public transportation</td>
<td>201</td>
<td>222</td>
<td>208</td>
<td>266</td>
<td>262</td>
<td>356</td>
<td>316</td>
<td>572</td>
<td>922</td>
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</table>

-1837-
<table>
<thead>
<tr>
<th>Public transportation</th>
<th>493</th>
<th>701</th>
<th>429</th>
<th>497</th>
<th>568</th>
<th>948</th>
<th>784</th>
<th>430</th>
<th>540</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Los-Angeles</th>
<th>San-Francisco</th>
<th>San Diego</th>
<th>Portland</th>
<th>Seattle</th>
<th>Honolulu</th>
<th>Anchorage</th>
<th>Phoenix</th>
<th>Denver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>7,021</td>
<td>8,960</td>
<td>6,883</td>
<td>6,160</td>
<td>6,991</td>
<td>4,810</td>
<td>6,323</td>
<td>4,912</td>
</tr>
<tr>
<td>Rented-dwelling</td>
<td>4,066</td>
<td>4,932</td>
<td>4,138</td>
<td>2,681</td>
<td>3,047</td>
<td>4,030</td>
<td>3,699</td>
<td>2,667</td>
</tr>
<tr>
<td>Other-lodging</td>
<td>589</td>
<td>700</td>
<td>443</td>
<td>614</td>
<td>647</td>
<td>630</td>
<td>607</td>
<td>548</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,576</td>
<td>2,645</td>
<td>2,654</td>
<td>2,631</td>
<td>2,753</td>
<td>2,200</td>
<td>2,656</td>
<td>2,669</td>
</tr>
<tr>
<td>Household services</td>
<td>1,012</td>
<td>1,326</td>
<td>936</td>
<td>808</td>
<td>800</td>
<td>669</td>
<td>950</td>
<td>699</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>478</td>
<td>514</td>
<td>429</td>
<td>377</td>
<td>672</td>
<td>667</td>
<td>592</td>
<td>560</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,923</td>
<td>3,962</td>
<td>3,424</td>
<td>2,673</td>
<td>4,424</td>
<td>3,040</td>
<td>5,242</td>
<td>3,632</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>4,475</td>
<td>4,472</td>
<td>1,325</td>
<td>1,235</td>
<td>1,392</td>
<td>1,424</td>
<td>1,455</td>
<td>1,263</td>
</tr>
<tr>
<td>Other-vehicle expenses (repairs, insurance, leases, license, and other charges)</td>
<td>2,955</td>
<td>2,962</td>
<td>2,643</td>
<td>2,614</td>
<td>3,337</td>
<td>2,194</td>
<td>3,211</td>
<td>2,876</td>
</tr>
<tr>
<td>Public transportation</td>
<td>508</td>
<td>828</td>
<td>404</td>
<td>570</td>
<td>628</td>
<td>873</td>
<td>953</td>
<td>436</td>
</tr>
</tbody>
</table>

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>2,141</td>
<td>2,118</td>
<td>2,428</td>
<td>2,678</td>
<td>2,996</td>
<td>3,373</td>
<td>3,839</td>
<td>4,161</td>
<td>5,927</td>
</tr>
<tr>
<td>Apparel</td>
<td>773</td>
<td>508</td>
<td>586</td>
<td>781</td>
<td>883</td>
<td>1,073</td>
<td>1,226</td>
<td>1,524</td>
<td>2,256</td>
</tr>
<tr>
<td>Health insurance</td>
<td>328</td>
<td>606</td>
<td>956</td>
<td>974</td>
<td>830</td>
<td>784</td>
<td>770</td>
<td>732</td>
<td>974</td>
</tr>
<tr>
<td>Medical services</td>
<td>155</td>
<td>145</td>
<td>330</td>
<td>311</td>
<td>335</td>
<td>470</td>
<td>498</td>
<td>428</td>
<td>1,128</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>182</td>
<td>333</td>
<td>535</td>
<td>521</td>
<td>446</td>
<td>345</td>
<td>329</td>
<td>261</td>
<td>320</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>42</td>
<td>50</td>
<td>99</td>
<td>78</td>
<td>64</td>
<td>87</td>
<td>65</td>
<td>84</td>
<td>94</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>207</td>
<td>206</td>
<td>314</td>
<td>359</td>
<td>320</td>
<td>361</td>
<td>499</td>
<td>514</td>
<td>484</td>
</tr>
<tr>
<td>Education</td>
<td>1,544</td>
<td>656</td>
<td>360</td>
<td>451</td>
<td>275</td>
<td>371</td>
<td>475</td>
<td>443</td>
<td>664</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>41</td>
<td>109</td>
<td>165</td>
<td>163</td>
<td>174</td>
<td>212</td>
<td>273</td>
<td>235</td>
<td>517</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>2,362</td>
<td>2,186</td>
<td>2,449</td>
<td>2,633</td>
<td>2,926</td>
<td>3,407</td>
<td>3,848</td>
<td>4,187</td>
<td>6,170</td>
</tr>
<tr>
<td>Apparel</td>
<td>974</td>
<td>519</td>
<td>590</td>
<td>796</td>
<td>847</td>
<td>1,138</td>
<td>1,409</td>
<td>1,518</td>
<td>2,364</td>
</tr>
<tr>
<td>Health insurance</td>
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<td>614</td>
<td>927</td>
<td>907</td>
<td>789</td>
<td>714</td>
<td>691</td>
<td>646</td>
<td>938</td>
</tr>
<tr>
<td>Medical services</td>
<td>466</td>
<td>429</td>
<td>283</td>
<td>344</td>
<td>331</td>
<td>400</td>
<td>487</td>
<td>484</td>
<td>843</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>184</td>
<td>336</td>
<td>682</td>
<td>461</td>
<td>380</td>
<td>280</td>
<td>318</td>
<td>236</td>
<td>316</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>32</td>
<td>46</td>
<td>104</td>
<td>65</td>
<td>71</td>
<td>102</td>
<td>67</td>
<td>104</td>
<td>98</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>234</td>
<td>203</td>
<td>276</td>
<td>302</td>
<td>304</td>
<td>454</td>
<td>483</td>
<td>443</td>
<td>467</td>
</tr>
<tr>
<td>Education</td>
<td>1,854</td>
<td>605</td>
<td>322</td>
<td>404</td>
<td>266</td>
<td>338</td>
<td>426</td>
<td>360</td>
<td>689</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>61</td>
<td>120</td>
<td>145</td>
<td>295</td>
<td>180</td>
<td>199</td>
<td>262</td>
<td>245</td>
<td>678</td>
</tr>
</tbody>
</table>

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>3,936</td>
<td>3,347</td>
<td>3,658</td>
<td>3,700</td>
<td>4,625</td>
<td>4,931</td>
<td>5,344</td>
<td>6,153</td>
<td>8,073</td>
</tr>
<tr>
<td>Apparel</td>
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<td>728</td>
<td>1,036</td>
<td>912</td>
<td>1,097</td>
<td>1,349</td>
<td>1,362</td>
<td>1,720</td>
<td>3,069</td>
</tr>
<tr>
<td>Health insurance</td>
<td>842</td>
<td>920</td>
<td>1,254</td>
<td>1,598</td>
<td>1,794</td>
<td>1,672</td>
<td>1,679</td>
<td>1,547</td>
<td>1,588</td>
</tr>
<tr>
<td>Medical services</td>
<td>426</td>
<td>283</td>
<td>436</td>
<td>438</td>
<td>660</td>
<td>736</td>
<td>807</td>
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<td>634</td>
</tr>
<tr>
<td>Prescription drugs</td>
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<td>437</td>
<td>551</td>
<td>921</td>
<td>919</td>
<td>757</td>
<td>733</td>
<td>665</td>
<td>634</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>98</td>
<td>94</td>
<td>79</td>
<td>102</td>
<td>183</td>
<td>147</td>
<td>141</td>
<td>145</td>
<td>188</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>334</td>
<td>305</td>
<td>342</td>
<td>379</td>
<td>463</td>
<td>482</td>
<td>542</td>
<td>656</td>
<td>907</td>
</tr>
<tr>
<td>Education</td>
<td>557</td>
<td>326</td>
<td>318</td>
<td>201</td>
<td>276</td>
<td>306</td>
<td>415</td>
<td>451</td>
<td>1,173</td>
</tr>
</tbody>
</table>
8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>3,814</td>
<td>3,818</td>
<td>3,564</td>
<td>3,787</td>
<td>4,816</td>
<td>4,901</td>
<td>5,626</td>
<td>6,347</td>
<td>7,847</td>
</tr>
<tr>
<td>Apparel</td>
<td>972</td>
<td>887</td>
<td>1,000</td>
<td>1,034</td>
<td>1,077</td>
<td>1,419</td>
<td>1,499</td>
<td>1,857</td>
<td>3,120</td>
</tr>
<tr>
<td>Health insurance</td>
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<td>877</td>
<td>1,195</td>
<td>1,624</td>
<td>1,624</td>
<td>1,856</td>
<td>1,498</td>
<td>1,410</td>
<td>1,410</td>
</tr>
<tr>
<td>Medical services</td>
<td>960</td>
<td>743</td>
<td>431</td>
<td>668</td>
<td>611</td>
<td>709</td>
<td>777</td>
<td>281</td>
<td>982</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>421</td>
<td>440</td>
<td>740</td>
<td>632</td>
<td>734</td>
<td>670</td>
<td>604</td>
<td>665</td>
<td>655</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>170</td>
<td>60</td>
<td>72</td>
<td>127</td>
<td>142</td>
<td>136</td>
<td>192</td>
<td>134</td>
<td>162</td>
</tr>
<tr>
<td>Personal-care-products and services</td>
<td>413</td>
<td>341</td>
<td>345</td>
<td>368</td>
<td>489</td>
<td>609</td>
<td>580</td>
<td>630</td>
<td>801</td>
</tr>
<tr>
<td>Education</td>
<td>722</td>
<td>375</td>
<td>221</td>
<td>362</td>
<td>324</td>
<td>293</td>
<td>387</td>
<td>503</td>
<td>928</td>
</tr>
<tr>
<td>Life-and-other-personal-insurance</td>
<td>387</td>
<td>191</td>
<td>444</td>
<td>249</td>
<td>326</td>
<td>434</td>
<td>481</td>
<td>693</td>
<td>827</td>
</tr>
</tbody>
</table>

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>5,396</td>
<td>5,262</td>
<td>4,448</td>
<td>4,738</td>
<td>5,614</td>
<td>5,665</td>
<td>6,199</td>
<td>7,057</td>
<td>8,648</td>
</tr>
<tr>
<td>Apparel</td>
<td>2,266</td>
<td>1,030</td>
<td>1,634</td>
<td>1,786</td>
<td>1,359</td>
<td>1,670</td>
<td>2,133</td>
<td>2,319</td>
<td>3,441</td>
</tr>
<tr>
<td>Health insurance</td>
<td>1,034</td>
<td>806</td>
<td>433</td>
<td>796</td>
<td>861</td>
<td>1,173</td>
<td>1,321</td>
<td>1,368</td>
<td>1,634</td>
</tr>
<tr>
<td>Medical services</td>
<td>189</td>
<td>253</td>
<td>247</td>
<td>411</td>
<td>429</td>
<td>620</td>
<td>604</td>
<td>721</td>
<td>937</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>358</td>
<td>177</td>
<td>209</td>
<td>329</td>
<td>574</td>
<td>457</td>
<td>464</td>
<td>509</td>
<td>573</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>88</td>
<td>62</td>
<td>53</td>
<td>73</td>
<td>103</td>
<td>86</td>
<td>115</td>
<td>146</td>
<td>146</td>
</tr>
<tr>
<td>Personal-care-products and services</td>
<td>423</td>
<td>314</td>
<td>405</td>
<td>406</td>
<td>433</td>
<td>516</td>
<td>542</td>
<td>653</td>
<td>896</td>
</tr>
<tr>
<td>Education</td>
<td>348</td>
<td>164</td>
<td>408</td>
<td>645</td>
<td>249</td>
<td>273</td>
<td>531</td>
<td>859</td>
<td>1,810</td>
</tr>
<tr>
<td>Life-and-other-personal-insurance</td>
<td>366</td>
<td>493</td>
<td>224</td>
<td>311</td>
<td>278</td>
<td>352</td>
<td>404</td>
<td>658</td>
<td>900</td>
</tr>
</tbody>
</table>
Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. Notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor's disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit; or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

JOHN PRATHER, Chair
APPROVED BY AGENCY: April 11, 2005
FILED WITH LRC: April 14, 2005
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, May 23, 2005 at 10 a.m. at 100 Airport Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, May 16, 2005, 5 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 Tuesday, May 31, 2005. 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: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 695-7293.
Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures to be followed by the authority in garnishing a defaulted student loan borrower's wages for payment of the borrower's student loan debt as well as the procedures for a borrower to request a hearing on a garnishment and procedures for conducting that hearing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the requirements of the Higher Education Act of 1965, as amended, and its accompanying regulations regarding the collection of defaulted student loan debts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes permit the authority to collect defaulted student loan debts through administrative wage garnishment and to conduct administrative hearings relating to the wage garnishment.

(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 statutes by setting forth the procedures to be followed during the administrative wage garnishment process as well as the hearing process.

(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 will reflect the current poverty level and consumer expenditure figures published by the federal government.

(b) The necessity of the amendment to this administrative regulation: Current poverty level and consumer expenditure figures are necessary to assure a current and accurate standard for determining the validity of a claim of extreme hardship.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms with the requirements of federal and state law that the authority promulgate regulations establishing the procedures for the conduct of hearings regarding administrative wage garnishment by the authority.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the statutes by establishing an objective standard for extreme financial hardship that will be based on current economic data as established by the federal government.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Student loan borrowers that have defaulted on their repayment obligations, whose wages are otherwise eligible for administrative wage garnishment and who are claiming that such garnishment will cause them extreme financial hardship. During FY 2003-2004 approximately 970 notices of wage garnishment were sent and received by student loan borrowers. During the same period, 15 of those student loan borrowers requested a hearing regarding the wage garnishment. Of the 15 hearing requests, all of the hearings were requested on the grounds of extreme financial hardship.

(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: Upon notice of the authority's intent to issue an administrative wage garnishment, a student loan borrower contesting the garnishment and asserting a claim of extreme financial hardship will submit financial data to be evaluated in comparison to the data contained in the administrative regulation. Expenditures reported by the borrower which exceed the amounts specified in the administrative regulation will be presumed to be unnecessary. Thus, the most recent figures relating to consumer expenditures must be utilized in the administrative regulation.

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

(a) Initially: There are no costs to student loan borrowers associated with the implementation of the amendment to this administrative regulation. Forns for requesting a hearing and for providing extreme financial hardship are provided to the borrowers at no cost to the borrower. The authority bears any costs associated with the request for hearing.

(b) On a continuing basis: Same as (6)(a) above.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The authority maintains a federally-restricted trust fund pursuant to 20 U.S.C. Section 1072b for operation of the insured student loan program.

(6) 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 is necessary for the implementation of the amendment to this administrative regulation. The amendment to this administrative regulation merely adapts the most recent economic standards, as determined by the federal government, for evaluating a student loan borrower's assertion that administrative wage garnishment will create an extreme financial hardship.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(8) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. 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 Section 2 and 3 of the Kentucky Constitution.

Federal Mandate Analysis Comparison

1. Cite the federal statute or regulation constituting the federal mandate. 34 C.F.R. 682.410 (b) (10), 20 U.S.C.S. 1095a.

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B, of the federal act and procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, an explanation of the borrower's right to participate, and evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority
may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower’s written request is received by the authority after the 15th day following the borrower’s receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within 60 days, but shall not delay issuance of a withholding order. The administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of “extreme financial hardship.” In order to prove “extreme financial hardship,” a debtor must show, if his income is below the poverty level, that this is necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of uninsured medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer’s decision shall follow the standard that the board shall uphold the hearing officer’s decision unless it is clearly unsupported by the evidence. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been re-employed continuously for at least 12 months. Unless the authority receives information that the borrower believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the debtor, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from the borrower’s wages an amount that does not exceed the lesser of 10 percent of the borrower’s disposable pay for each pay period or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The administrative regulation does not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the authority, the hearing must be conducted and a decision rendered within 60 days after the receipt of the request for a hearing, and that the hearing officer’s decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a “recommended” order subject to finalization by the board). The administrative regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted “in accordance with the procedures that the agency may prescribe.” The authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The administrative regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the

- 1842 -
hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, there is 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.

COUNCIL ON POSTSECONDARY EDUCATION
(AMENDMENT)


RELATES TO: KRS Chapter 13B, 164.020, 164.030, 164A.330(6)

STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution and authorizes the council to set different tuition amounts for residents of Kentucky and for nonresidents. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution.

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single consolidated summer term as defined by the institution.

(2) "Clear and convincing evidence" means proof beyond a well-founded doubt and that produces in the mind of the reviewer a firm belief or conviction.

(3) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, including serious personal illness or injury, or illness or death of a parent.

(4) (39) "Degree level" means enrollment in a course or program which could result in the award of:
(a) Certificate, diploma or other program award at an institution;
(b) Baccalaureate degree or lower including enrollment in a course by a nondegree-seeking postbaccalaureate student;
(c) Graduate degree or graduate certification other than a first-professional degree in law, medicine, dentistry or "Pharm. D."
(d) Professional degree in law, medicine, dentistry, or "Pharm. D."

(5) (44) "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by a preponderance of the evidence that a person is domiciled in Kentucky and is a resident of Kentucky.

(6) (56) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria established in Section 5 of this administrative regulation.

(7) (66) "Determination of 'residency status'" means the decision of a postsecondary education institution that may include a formal hearing that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(8) (77) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(9) (88) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(10) (99) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who can meet the criteria established in Section 5 of this administrative regulation.

(11) (100) "Institution" means an entity defined in KRS 164.001(11) if the type of institution is not expressly stated and includes the Kentucky Virtual University, the Council on Postsecondary Education, and the Kentucky Higher Education Assistance Authority.

(12) (111) "Kentucky resident" means a determination by an institution that a person is domiciled in and is a resident of Kentucky as determined by this administrative regulation.

(13) (122) "Nonresident" means a person who is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who is not a Kentucky resident within the meaning of this administrative regulation.

(14) (133) "Parent" means one (1) of the following:
(a) A person's father or mother;
(b) A court-appointed legal guardian if:
1. The guardianship is recognized by an appropriate court within the United States;
2. There was a relinquishment of the rights of the parents; and
3. The guardianship was not established primarily to confer Kentucky residency on the person.

(15) "Preponderance of the evidence" means the greater weight of evidence, or evidence which is more credible and convincing to the mind.

(16) "Residence" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(17) "Sustenance" means living expenses including room, board, maintenance, transportation, and also includes [may include] educational expenses including tuition, fees, books, and supplies.

Section 2. Scope. (1) State-supported postsecondary education institutions were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary education shall be provided so far as feasible at reasonable cost to an individual who is domiciled in Kentucky and who is a resident of Kentucky. This administrative regulation sets forth the criteria that are to be evaluated and the processes employed to determine whether or not a student is, in fact, a resident of Kentucky for the purpose of determining entitlement to the benefits of postsecondary education that are afforded to all bona fide Kentucky residents. An evaluation of an individual student's information shall be directed at determining whether the person is domiciled in and is a resident of Kentucky.

(2) The Council on Postsecondary Education may require a student who is neither domiciled in nor a resident of Kentucky to
meet higher admission standards and to pay a higher level of tuition than resident students.

(3) This administrative regulation applies to all student residency determinations regardless of circumstances, including residency determinations made by the state-supported institutions for prospective and currently-enrolled students; the Southern Regional Education Board sponsored programs; reciprocity agreements, where appropriate; the Kentucky Virtual University programs and services, where appropriate; academic common market programs; the Kentucky Educational Excellence Scholarship Program; and other state student financial aid programs, as appropriate.

Section 3. Determination of Residency Status; General Rules.

(1) A determination of residency shall include:
(a) An initial determination of residency status by an institution during the admission process or upon enrollment in an institution for a specific academic term or for admission into a specific academic program;
(b) A reconsideration of a determination of residency status by an institution based upon a changed circumstance; and
(c) A formal hearing conducted by an institution upon request of a student after other administrative procedures have been completed.

(2) An initial determination of residency status shall be based upon:
(a) The facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution;
(b) Information derived from admissions materials;
(c) Other materials required by an institution which are consistent with this administrative regulation; or
(d) Other information available to the institution from any other source.

(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by clear and convincing (a-preponderance-of-the-evidence).

(4) A determination of residency status shall be based upon verifiable circumstances or actions.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.

(6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an institution.

(7) A student may apply for a review of a determination of residency status once for each academic term.

(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.

(9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.

(10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institution official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status. The penalty may also include:
(a) Student discipline by the institution through a policy written and disseminated to students;
(b) Criminal prosecution.

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that a person is a nonresident if:
(a) A person is, or seeks to be, an undergraduate student and admissions records show the student to be a graduate of an out-of-state high school within five (5) years prior to a request for a determination of residency status;
(b) A person's admissions records indicate the student's residence to be outside of Kentucky at the time of application for admission;
(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution;
(d) A person moves to Kentucky and within twelve (12) months enrolls at an institution more than half time; or
(e) A person has a continuous absence of one (1) year from Kentucky.

(2) A student shall be given the opportunity to show, by clear and convincing evidence, that a presumption arising from subsection (1) of this section is incorrect and that the student [shall be] overcome by presentation of evidence that is sufficient to demonstrate that a person is domiciled in and is a resident of Kentucky.

(3) Provided, however, an institution shall comply with the provisions of KRS 164,020(8).

Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent and therefore takes the residency of a parent (lacks the ability to form the requisite intent to establish domicile).

(2) In determining the dependent or independent status of a person, the following information shall be considered as well as other relevant information available at the time the determination is made:
(a) Whether the person has been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status;
(b) Whether the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes;
(c) Whether the person has financial earnings and resources independent of a person other than an independent spouse necessary to provide for the person's own sustenance;
(d) The financial resources from student financial aid may be considered in a determination whether a student is independent, but also may be considered in determining whether a student is present in Kentucky primarily for an educational purpose;
(e) Whether the person is a dependent or independent and who is the person's permanent address, parent's mailing address, or location of high school of graduation;
(f) Whether the person is married to an individual domiciled in and who is a resident of Kentucky, and who is a factor in determining whether a student is dependent or independent;
(g) Whether the person is a dependent or independent and who is a factor in determining whether a student is dependent or independent;
(h) Whether the person is a dependent or independent and who is a factor in determining whether a student is dependent or independent.

Section 6. Effect of a Determination of Dependent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be:
(a) The domicile and residency of a dependent person shall be the same as either parent;
(b) The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.
(c) [ab] The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be Kentucky if either parent is domiciled in and is a resident of Kentucky regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to federal or Kentucky income tax provisions.
(2)(a) If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky but subsequently move from the state, the dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled.

(b) If continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed when the circumstances detailed in subparagraph 4 of this paragraph are present.

Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status. (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the time of active service; or

(b) If the member, spouse, or dependent returns to this state within six (6) months of the date of the member's discharge from active duty.

(2)(a) A member, spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to those orders if the member is not:

1. Stationed in Kentucky for the purpose of enrollment at an institution; or

2. On temporary assignment of less than one (1) year.

(b) A member, spouse or dependent of a member, shall not lose Kentucky residency status if the member is thereafter transferred on military orders while the member, spouse or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3) Membership in the National Guard or civilian employment at a military base alone shall not qualify a person for Kentucky residency status under the provisions of subsections (1) and (2) of this section.

(4) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration. (1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designations B-1, C-3, H-4 if accompanying a person with an H-1 visa, L-1, L-1, N, R, shall establish domicile and residency the same as another person.

(3)(a) An independent person holding a nonimmigrant visa with designations B, C, D, F, H-2, H-3, H-4 if accompanying a person with an H-2 or H-3 visa, J, M, O, P, Q, S, TD or TN shall not be classified as a Kentucky resident, because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile within the meaning of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa as described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of Kentucky, may be a resident of Kentucky for the purposes of this administrative regulation.

(4) A person shall be a Kentucky resident for the purpose of this administrative regulation if the person graduated from a Kentucky high school and:

(a) Is an undocumented alien;

(b) Holds a visa listed in subsections (2) or (3)(a) of this section;

(c) Is a dependent of a person who holds a visa listed in subsections (2) or (3)(a) of this section.

(5)(a) An undocumented alien who graduates from a Kentucky high school and who resides in Kentucky shall be presumed to be a Kentucky resident if that person enrolls in an institution in the next academic year following graduation from high school.

(b) An institution shall make a determination based on the facts in evidence as to whether the student is domiciled in and a resident of Kentucky.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(6).

Section 10. Criteria Used in a Determination of Residency Status. (1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts essential to the determination of domicile and residency. A person shall not be determined to be a Kentucky resident by the performance of an act incidental to fulfilling an educational purpose or by an act performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

A person shall respond to all requests by an institution for information and documents.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency:

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the date of the academic term for which a classification of Kentucky residency is sought;

(c) 1. Filing of Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or

2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution based on a determination by that school that the person is a resident of Kentucky;

(f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky, with application to or attendance at an institution following and incidental to the change in domicile and residency;

(g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Ownership of real property in Kentucky, if the property was owned by the student as a resident preceding the date of application for a determination of residency status and is not incident to enrollment in a Kentucky institution;

(j) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing;

(k) Marriage of an independent student to a person who
was domiciled in and a resident of Kentucky prior to the marriage and who continues to be domiciled in and a resident of Kentucky:

(i) The extent to which a student maintains his or her residence

(ii) Continued presence in Kentucky during academic breaks; and

(k) [m] The extent to which a student is dependent on student financial aid in order to provide basic sustenance may be considered in determining that a student is primarily in Kentucky for the purpose of receiving an education and thus lacks the requisite intent to be domiciled in Kentucky.

(3) Except as provided in subsection (4) of this section, the following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a person is domiciled in and is a resident of Kentucky:

(a) Kentucky automobile registration;

(b) Kentucky driver's license; and

(c) Registration as a Kentucky voter.

(4) However, the absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.

(5) A person shall not be deemed to be a Kentucky resident by the performance of an act which is incidental to fulfilling an educational purpose or by an act performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency. A person shall respond to all information requests by an institution.

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency status of a parent or parents of a dependent person changes, an institution shall reassess residency either upon a request by the student or a review initiated by the institution.

(2) Upon transfer to a Kentucky institution, a student's residency status shall be assessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Student Responsibilities. (1) A student shall report under the proper residency classification which includes the following actions:

(a) Raising a question in a timely manner concerning residency classification;

(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's residency status.

(3)(a) If a student fails to provide, by the date specified by the institution, information and documents required by an institution in a determination of residency status, the student shall be notified by the institution that the review has been canceled and that a determination has been made.

(b) Notification shall be made by registered mail, return receipt requested.

(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.

(4) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution is because a student has failed to meet published deadlines for the submission of documents and information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

(5) A determination by an institution that a person is a resident for purposes of tuition assessment shall apply to the tuition assessment for the academic term in which an application for review was made, but may not be applied retroactively.

Section 13. Institutional Responsibilities. Each institution shall:

(1) Provide for an administrative appeals process that includes a residency appeals officer to consider student appeals of an initial residency determination and which shall include a provision of fourteen (14) days for the student to appeal the residency appeals officer's determination;

(2) Establish a residency review committee to consider appeals of residency determinations by the residency appeals officer. The residency review committee shall make a determination of student residency status and notify the student in writing within forty-five (45) days after receipt of the student appeal;

(3) Establish a formal hearing process as described in Section 14 of this administrative regulation; and

(4) Establish written policies and procedures for administering the responsibilities established in subsections (1), (2), and (3) of this section and that are:

(a) Approved by the institution's governing board;

(b) Made available to all students; and

(c) Filed with the council.

Section 14. Formal Institutional Hearing. (1) A student who appeals a determination of residency by a residency review committee shall be granted a formal hearing by an institution if the request is made by a student in writing within fourteen (14) calendar days after notification of a determination by a residency review committee.

(2) If a request for a formal hearing is received, an institution shall appoint a hearing officer to conduct a formal hearing. The hearing officer:

(a) Shall be a person not involved in determinations of residency at an institution except for formal hearings; and

(b) Shall not be an employee in the same organizational unit as the residency appeals officer.

(3) An institution shall have written procedures for the conduct of a formal hearing that have been adopted by the board of trustees or regents, as appropriate, and that provide for:

(a) A hearing officer to make a recommendation on a residency appeal;

(b) Guarantees of due process to a student that include:

1. The right of a student to be represented by legal counsel, and

2. The right of a student to present information and to present testimony and information in support of a claim of Kentucky residency;

(c) A recommendation to be issued by the hearing officer.

(4) An institution's formal hearing procedures shall be filed with the Council on Postsecondary Education and shall be available to a student requesting a formal hearing.

Section 15. Cost of Formal Hearings. (1) An institution shall pay the cost for all residency determinations including the cost of a formal hearing.

(2) A student shall pay for the cost of all legal representation in support of the student's claim of residency.

THOMAS D. LAYZELL, President
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2005, at 10 a.m. at the Council on Postsecondary Education, Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2005, five working days prior to the hearing, of their intent to attend. If no notification 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 will be accepted through May 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Dennis L. Tauboe, Associate Vice President / General Counsel, Council on Postsecondary Education,
VOLUME 31, NUMBER 11 – May 1, 2005

State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, fees are not involved.

(9) TIERING: Is tiering applied? Tiering is not appropriate under these circumstances because the regulation applies to all affected individuals in the same way.

EDUCATION PROFESSIONAL STANDARDS BOARD
(Amendment)

16 KAR 2:090. School psychologist.

RELATES TO: KRS 161.020, 161.028 [161.026], 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 [161.026], and 161.030 require that teachers and other professional school personnel hold certificates of legal qualification for their respective positions to be issued upon completion of programs of preparation prescribed [by the Kentucky Council on Teacher Education and Certification] and approved by the Education Professional Standards Board [State Board for Elementary and Secondary Education]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures [recommended by the Council] and approved by the Education Professional Standards Board [State Board]. This administrative regulation [which has been reviewed and recommended by the Kentucky Council on Teacher Education and Certification] establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the National Association of School Psychologists Standards for Training Programs [Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval].

Section 1. Conditions and Prerequisites. (1) The Provisional and Standard Certificate for School Psychologist shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board [State Board for Elementary and Secondary Education] administrative regulations to an applicant who has completed the approved program of preparation at a teacher education institution that adheres to the National Association of School Psychologists Standards for Training Programs, which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval and who in addition thereto has completed the NTE Specialty Area Examination with a minimum score of 630.

(2) The Standard Certificate for School Psychologist shall be issued initially for a duration of period of five (5) years and may be renewed for subsequent five (5) year periods upon completion within each period of at least three (3) years of experience as a school psychologist to include attendance participation in twenty-four (24) hours of continuing professional development activities. If any portion of the renewal experience is not completed, the Standard Certificate for School Psychologist may be renewed upon completion of six (6) semester hours of additional graduate credit appropriate for the position of school psychologist.

(3) The Standard Certificate for School Psychologist shall be valid for serving in the position of school psychologist in the common schools and in other elementary, secondary, and vocational schools approved under the jurisdiction of the State Board for Elementary and Secondary Education, but not for any private practice outside these school situations.

Section 2. (1) The Provisional Certificate for School Psychologist shall be issued upon application and with the recommendation of the [approval] preparing institution and in accordance with the pertinent Kentucy statutes and Education Professional Standards Board [State Board for Elementary and Secondary Education] administrative regulations to an applicant who has completed the required program and obtained a passing score on the required
assessment as set forth in 16 KAR 6:010 (forty-eight (48) semester hours of graduate credit from the approved program of preparation for the Standard Certificate for School Psychologist at a preparing institution approved under the standards and procedures included in the Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval) and who in addition to these criteria has completed the required NTE Specialty Area Examination in school psychology with a minimum score of 630.

(2) The Provisional Certificate for School Psychologist shall be issued for a duration period of one (1) year and shall qualify the applicant for a Rank II classification as provided in KRS 157.390. The certificate may be renewed for an additional year if the individual is serving in the position of the school psychologist on a half-time basis.

(3) The Provisional Certificate for School Psychologist shall be valid for serving in a public school [situation] in the position of school psychologist under the supervision of the preparing institution [or Department of Elementary and Secondary Education]. During this first year of service, the employer of the individual holding the Provisional Certificate for School Psychologist shall permit the individual to engage in the internship component of preparation as described by the preparing institution [in the Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval for the Standard Certificate for School Psychologist].

(4) The internship may be served full-time during one (1) school year or half-time during two (2) consecutive school years.

Section 3. (1) The Standard Certificate for School Psychologist shall be issued to an applicant who meets one (1) of the following requirement options:

(a) Option I:

1. Completion of an approved program of preparation which corresponds to the certificate at a teacher education institution that adheres to the National Association of School Psychologist Standards for Training Programs; and

2. Completion of the appropriate assessment and a passing score as established in 16 KAR 6:010; or

(b) Option II: Possession of a valid certificate as a nationally certified school psychologist issued by the National School Psychology Certification System.

(2) The Standard Certificate for School Psychologist shall be issued for a period of five (5) years and may be renewed for subsequent five (5) years upon application and the submission of proof of the following:

(a) Completion of at least three (3) years of experience as a school psychologist within each certification period; and

(b) Completion of seventy-two (72) hours of continuing professional development activities; or

(c) Six (6) semester hours of graduate training related to school psychology.

(3) The Standard Certificate for School Psychologist shall be valid for serving in the position of school psychologist in the common schools and in other elementary, secondary, and vocational schools but not for any private practice outside these school settings.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 23, 2005, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2005. 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. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd 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 establishes the certification requirements for school psychologist and the corresponding standards and procedures for school psychologist preparation programs at a teacher educator institution.

(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 and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining 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 assists in the effective administration of the statutes by adjusting the requirements for obtaining a provisional or standard school psychologist certificate and adopts the National Association of School Psychologists Standards for Training and Field Placement Programs in School Psychologists Standards for the Credentialing of School Psychologists, July 2000 as the standards for the approved program of preparation for school psychologists at a teacher education institution.

(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 incorporates current practice and aligns the standards for school psychologist preparation programs with national standards as is required by KRS 16:028(1)(b).

(b) 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. This amendment establishes the requirements for obtaining and maintaining a school psychologist certificate.

(c) How the amendment will assist in the effective administration of the statutes: The amendments updates the preparation program and certification requirements to more accurately reflect an educator's preparedness for certification.

(3) 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 prepara-
tion programs, and educators seeking new and additional certification as a school psychologist.

(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 178 school districts will be positively affected by the availability of properly certified school psychologists whose training reflects best practices in the profession. It provides applicants with the information they will need to familiarize themselves with the new certification requirements. The educator preparation programs will be positively affected by the adoption of the new preparation program standards that they have helped to develop.

(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 allocated or necessary for continuing implementation of regulation. There is no additional cost to previously-certified educators, educator preparation programs, or school districts.

(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 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
Amendment

16 KAR 2:100. Junior Reserve Officers Training Corps certification.

RELATES TO: KRS 161.010, 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NEECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certifications of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes the Kentucky certification for instructor of the Junior Reserve Officers Training Corps. This administrative regulation is not required by federal law.

Section 1. (1) The certificate for senior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:

(a) A bachelor's degree from a standard college or university as defined in KRS 161.010;

(b) Official recommendation by the appropriate branch of military service;

(c) Contract for this employment by a local school district; and

(d) Recommendation for certification by the local school superintendent.

(2) The certificate for senior instructor, Junior Reserve Officers Training Corps, may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of nine (9) semester hours to include the following:

(a) Human growth and development and learning theory;

(b) Foundations of education;

(c) Career development and vocational planning.

(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

Section 2. The certificate for junior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:

(a) High school graduation, or its equivalent as determined by an acceptable score on the General Education Development Test;

(b) Official recommendation by the appropriate branch of military service;

(c) Contract for this employment by a local school district; and

(d) Recommendation for certification by the local school superintendent.

(2) Initial Renewal. The certificate for junior instructor, Junior Reserve Officers Training Corps, may be renewed for a two (2) year period upon application and submission of the following:

(a) Verification by the local school superintendent of two (2) years' successful experience as a Junior Reserve Officer Training Corps Instructor at a local school district;

(b) Successful completion of the "New-to-Kentucky Teacher" Module and the "Substitute Teacher Orientation" Module found on www.kyeducators.org. The Junior ROTC instructor shall make reasonable efforts to complete the modules within the first ninety (90) days of employment with the local school district;

(c) Successful completion of a minimum of twenty-four (24) clock hours of district-approved professional development annually;

(d) Successful completion of the "New-to-Kentucky Teacher" Module and the "Substitute Teacher Orientation" Module found on www.kyeducators.org. The Junior ROTC instructor shall make reasonable efforts to complete the modules within the first ninety (90) days of employment with the local school district.

(3) Each subsequent two (2) year renewal thereafter shall require completion by September 1 of the year of expiration of the following:

(a) Six (6) [fifteen (15)] semester hours selected from an associate degree program from a standard college or university as defined in KRS 161.010; or

(b) Twenty-four (24) clock hours of district-approved professional development annually.

(4) Upon completion of the associate degree with a 2.5 grade point standing, the certificate for junior instructor, Junior Reserve Officers Training Corps, shall be renewed for a five (5) year period. Each five (5) year renewal thereafter shall require completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

(5) A junior instructor who renews the certificate for junior instructor, Junior Reserve Officers Training Corps by completing the twenty-four (24) hours of professional development annually shall not be eligible to receive the five (5) year certificate as noted in subsection (4) of this section, but shall be granted a certificate of two (2) years in duration.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 23, 2005, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 5 work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
VOLUME 31, NUMBER 11 – May 1, 2005

Contact Person: Dr. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd 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 establishes the initial certification requirements for Junior Reserve Officers Training Corps (JROTC) instructors and the requirements and process for periodic renewal of the certificate.

(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 of any public school personnel 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 and the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining 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 delineates the requirements for initial certification and renewal of certification for both senior and junior JROTC instructors.

(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 specifically changes the educational requirements for initial and subsequent renewal of the junior JROTC instructor certificate. For initial renewal senior JROTC instructors will be required to complete 24 hours of professional development a year or 6 hours of college credit in the areas of human growth and development and learning theory, foundations of education and career development and vocational planning, as well as complete the New-to-Kentucky Teacher and Substitute Teacher Orientation modules on KYEducators.org. For subsequent renewals JROTC junior instructors will be required to complete 24 hours of professional development a year or 6 hours college credit in the areas of human growth and development and learning theory, foundations of education and career development and vocational planning.

(b) The necessity of this amendment to this regulation: The amendment modifies the regulation to ensure adequate and appropriate training for JROTC junior instructor. It balances the need to retain these former military personnel, while addressing the need to ensure that these instructors be lifelong learners.

(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. This amendment modifies the requirements for obtaining and maintaining a JROTC junior instructor certificate.

(d) How the amendment will assist in the effective administration of the statutes: The amendment incorporates educational requirements for JROTC junior instructor certificate renewal which most appropriately apply to the position's specific educational duties.

(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 seeking renewal certification as a JROTC junior instructor.

(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 will be positively affected by the availability of properly certified JROTC junior instructors whose training reflects best practices in the profession and the ability to retain these specially trained individuals through a choice of renewal requirements. Educators will be positively affected by having a choice of educational requirements for renewal certification.

(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 allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, preparation programs, or school districts.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Fund.

(d) Whether the state 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


RELATES TO: KRS 161.020, 161.028 [161.026], 161.030

STATUTORY AUTHORITY: KRS 161.020, [161.026], 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020, 161.028 [161.026], 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education]. This administrative regulation establishes the preparation and certification program for guidance counselors, at all grade levels [established an appropriate certificate for guidance counseling and relates to the corresponding standards and procedures for program approval, as included in the Kentucky Standards for the Preparation Certification of Professional School Personnel].

Section 1. Conditions and Prerequisites. (1) The provisional and standard certificate for guidance counselor shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board [State Board for Elementary and Secondary Education] administrative regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures established by the Education Professional Standards Board [included in the Kentucky Standards for the Preparation Certification of Professional School Personnel, as adopted in 16 KAR 5:013, TEC 77-7.01].

(2) The guidance counseling program shall be subject to the program approval requirements established in 16 KAR 5:010 and shall incorporate the Kentucky Standards For Guidance Counselor Programs, incorporated by reference in 16 KAR 5:010.

(3) The provisional and standard certificate for guidance coun-
Section 2. The provisional certificate for guidance counselor shall be issued to an applicant upon completion of an approved master's level program in guidance counseling. [Prerequisites for guidance-counseling certification shall include the following:]

(a) A Kentucky teaching certificate as follows:
1. For guidance counseling—grades K-8, a certificate valid for classroom teaching at the elementary level, grades 1-8, K-4, or 5-8.
2. For guidance counseling—grades 5-12, a certificate valid for classroom teaching in the middle grades 5-8 or at the secondary level, grades 7-12 or 9-12.
3. Teachers who hold a Kentucky teaching certificate valid for teaching art, music, physical education, special education, or school media librarian in grades K-12 may complete the curriculum for K-8 guidance counseling or 5-12 guidance counseling, provided the applicant has teaching experience corresponding to the grade range of the guidance counseling curriculum to be completed.

(b) One (1)-year of successful full-time classroom teaching experience.

(c) Persons who have completed an approved master's degree preparation certification program for guidance counseling in another state which does not require classroom teaching certification and teaching experience may satisfy the prerequisites with two years of experience as a guidance counselor.

(3) [43] The provisional certificate for guidance counselor shall be issued for a [duration] period of five (5) years and may be renewed upon application and submission of proof of the completion of a minimum of nine (9) semester hours of graduate credit in the areas of counseling or guidance counseling every five (5) years selected from the program leading to the standard certificate for guidance counselor.

(3) [44] If [Whenever there is a lapse of in] a provisional certificate for guidance counselor for lack of meeting the renewal requirements, certification may be reissued at a later date upon application and the submission of proof of the completion of [by-first completing] a minimum of nine (9) semester hours of graduate credit for each five (5) year period of validity or lapse of the guidance counselor certificate. The graduate credit shall be in the areas of counseling or guidance counseling [applicable to the Standard Certificate for Guidance Counselor].

Section 2. Applicants who have completed the program of preparation for guidance counseling in grades K-8 may qualify for guidance counseling in grades 5-12 by completing a minimum of six (6) semester hours of coursework which includes the following:

(1) Human behavior, development, and learning for secondary pupils.
(2) Instructional design and curriculum for elementary school pupils.
(3) Career development and vocational planning for secondary school pupils.
(4) A practicum experience at the high school level prior to employment at that level.

Section 3. (1) The standard certificate for guidance counselor shall be issued to an applicant who meets one of the following qualification options:
(a) Option I:
1. Successful completion of an approved master's level program in guidance counseling.
2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level program in guidance counseling program.
3. One (1) year of full time employment as a certified guidance counselor in a public school or nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association.

4. A valid Kentucky Professional teaching certificate; and
5. A minimum of one (1) year of full time classroom teaching experience on a Professional Teaching Certificate in a public school or a nonpublic school which meets the state performance standards as established in KRS 156.160 or which has been accredited by a regional or national accrediting association; or
(b) Option II:
1. Successful completion of an approved master's level program in guidance counseling;
2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level program in counseling or guidance counseling; and
3. A minimum of two (2) years of successful employment as a full-time certified guidance counselor. Applicants who have completed the program of preparation for guidance counseling in grades 7-12 or 5-12 may qualify for guidance counseling in grades K-8 by completing a minimum of six (6) semester hours of coursework which includes the following:
   (1) Human behavior, development, and learning for elementary school pupils.
   (2) Instructional design and curriculum for elementary school pupils.
   (3) Career development and vocational planning for elementary school pupils.
   (4) A practicum experience in the elementary grades prior to employment at that level.

Section 4. (1) The standard certificate for guidance counselor shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary Education administrative regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved by the standards and procedures included in the Kentucky Standards for the Preparation Certification of Professional School Personnel as adopted in 16 KAR 6:013, TEC 77-0.

(2) A prerequisite for the standard certificate for guidance counselor shall be one (1) year of experience as a full-time guidance counselor.

(3) [43] The standard certificate for guidance counselor shall be issued for a [duration] period of five (5) years and shall be renewed subsequently for five (5) year periods upon completion by September 1 of the year of expiration, the Effective Instructional Leadership Act (EILA) hours as specified by the Kentucky Department of Education in KRS 156.101. [of a minimum of sixty (60) clock hours of appropriate counselor role-specific training.] It shall be the responsibility of the guidance counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal. [Six-(6)-semester hours of additional graduate credit in counseling-related coursework may be substituted in lieu of the sixty (60) clock hours.]

(4) [44] Whenever there is a lapse in the standard certificate for guidance counselor for lack of meeting renewal requirements, the certificate may be reissued at a later date under current administrative regulations by first completing twelve (12) clock hours of counselor role-specific training for each year since the expiration of the certificate up to a maximum of seventy-five (75) clock hours or nine (9) [six-(6)] semester hours of additional graduate credit appropriate to position of guidance counselor.

Section 4. Implementation Dates. (1) The provisions for the issuance of the provisional and standard certificate for guidance counselor, all grades, shall apply to a student admitted to a program of preparation beginning September 1, 2003.

(2) A candidate admitted prior to September 1, 2003 to an approved program for guidance counselor under prior versions of this administrative regulation shall complete the program by December 31, 2006.

(a) A candidate formally admitted by September 1, 2003, to an approved preparation program for guidance counselor under a previous version of this regulation shall be eligible for the guidance counselor certificate, all grades upon:
1. Completion of the program in which the candidate is enrolled as identified in this subsection;
2. Successful completion of an approved additional three (3) to six (6) graduate semester hours. The additional graduate semester hours shall be designed to address content of the preparation program not previously addressed and which provides the candidate with knowledge relevant to counseling all grades; and

3. A recommendation from the institution of higher education for the appropriate certificate.

(b) An individual who holds a valid Kentucky provisional or standard guidance counselor certificate, grades K-8; grades 7-12 or grades 5-12 shall be eligible to extend that certificate to a provisional or standard guidance counselor certificate, all grades, upon application and proof of the following:

1. Successful completion of an additional three (3) to six (6) graduate semester hours from an approved counselor preparation program. The additional graduate semester hours shall be designed to address content of the preparation program not already addressed and for the grade range sought by the extension; and

2. Recommendation from the institution of higher education for the appropriate certificate in accordance with the requirements established by existing statutes and regulations.

Section 5: Validity of Prior Certificates. (1) A valid Provisional or Standard Certificate for Guidance Counselor for grades K-8 issued under prior versions of this administrative regulation shall be valid for the position of guidance counselor for grades K-8 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade K-8.

(2) A valid Provisional or Standard Certificate for Guidance Counselor for grades 5-12 issued under prior versions of this administrative regulation shall be valid for the position of guidance counselor for grades 5-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade K-8.

(3) A valid Provisional or Standard Certificate for Guidance Counselor grades 7-12 issued under prior versions of this administrative regulation shall be valid for the position of guidance counselor for grades 7-12 and also for any other school configurations having sequential combination of the grades K-12 that includes any grade 7-12.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 23, 2005, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2005. 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. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd 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 establishes the preparation and certification requirements for school guidance counselors.
(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 and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rest the responsibility of selecting assessments and determining 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 delineates the requirements for issuance and renewal of the provisional and standard certificate for guidance counselor.

(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 updates the language and terminology, changes the certification to "all grades" P-12 from either grades K-5 or 5-12, defines the provisional certificate as awarded upon completion of an approved preparation program in guidance counseling, defines the standard certificate as awarded upon completion of Option I: Holding a valid Kentucky teaching, counseling and having 1 year of teaching experience and 1 year of school guidance counselor experience or Option II: having 2 years of successful employment as a school guidance counselor, incorporates by reference the council for accreditation of counseling and related educational programs standards, November 2004 as the standards for educator preparation programs for guidance counselors, delineates a process by which persons already certified as guidance counselors may extend their certificate to cover grades P-12, specifies that the Effective Instructional Leadership Act hours as required by the Kentucky Department of Education are applicable to guidance counselors.
(b) The necessity of this amendment to this regulation: The amendment addresses concerns with the current guidance counselor certification and will incorporate new standards.
(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 amendment establishes the requirements for obtaining and maintaining provisional and standard guidance counselor certificates for all grades P-12.
(d) How the amendment will assist in the effective administration of the statutes: The amendments updates the preparation program and certification requirements to more accurately reflect an educator's preparedness for guidance counselor certification.

(3) 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 guidance counselor certification.

(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 will be positively affected by the availability of properly certified guidance counselors whose training reflects best practices in the profession. It provides applicants with the information they will need to familiarize themselves with the new certification requirements. The educator preparation programs will be positively affected by the implementation of the new preparation program standards that they have helped to develop.

(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 allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, educator preparation programs, or school districts.

(6) What is the source of the funding to be used for the implement 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 directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering was applied to allow candidates formally admitted by September 1, 2003 to an approved preparation program and certificate holders under the previous regulation to obtain a standard certificate, all grades under the amendment. The amendment allows these applicants to obtain the standard certificate after completion of an approved additional 3 to 6 graduate semester hours and a recommendation from the institution of higher education.

EDUCATION PROFESSIONAL STANDARDS BOARD

(16) KAR 4:010. Qualifications for professional school positions.

RELATES TO: KRS 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires appropriate certification for a professional education position in a Kentucky public school. This administrative regulation establishes certificate qualifications for the positions in a local school district for which a specific certificate is not available.

Section 1. This administrative regulation shall not apply to a position for which a specific certificate is available under another administrative regulation promulgated by the board in KAR Title 16.

Section 2. School Business Administrator. The qualifications for the position of school business administrator shall be one (1) of the following:

(1) Kentucky certification for school superintendent;
(2) A bachelor's or advanced degree in business; or
(3) Valid Kentucky certification for school business administrator issued prior to September 1, 1994.

Section 3. Director of Districtwide Services. A director of districtwide services shall qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, school business administrator, or principal.

Section 4. Director of Federally Supported Programs. A director of federally supported programs shall qualify for this position on the basis of certification either as a school superintendent, supervisor of instruction, or school principal.

Section 5. Consultant. A consultant in elementary education, special education, or in an academic subject field shall qualify for the position on the basis of the following:

(1) Master's degree or nondegree fifth-year program;
(2) Certification in the appropriate subject field or service area; and
(3) Three (3) years of teaching experience in the appropriate subject field or service area.

Section 6. Reading Program Consultant. A reading program consultant shall qualify for the position on the basis of certification as a reading specialist.

Section 7. Gifted Education Coordinator. A gifted education coordinator shall qualify for the position on the following:

(1) A master's degree or nondegree fifth-year program;
(2) A certificate endorsement for teacher of gifted education; and
(3) Three (3) years of teaching experience.

Section 8. Special Education Work Study Program Coordinator. A special education work study program coordinator shall qualify for the position on the basis of certification as a teacher of exceptional children.

Section 9. Professional Development Coordinator. The professional development coordinator shall qualify for the position on the basis of certification as a principal or supervisor of instruction.

Section 10. Instructional Television Coordinator. An instructional television coordinator shall qualify for the position on the basis of certification for classroom teaching.

Section 11. Instructional Coordinator. The instructional coordinator shall qualify for the position on the basis of certification for supervisor of instruction or school principal at the appropriate level.

Section 12. School Health Coordinator. A school health coordinator shall qualify for the position on the basis of certification for classroom teaching or certification for school nurse.

Section 13. Chapter I Remedial Mathematics. A teacher holding a valid early elementary certificate, grades K-4, shall qualify for teaching mathematics in a Chapter I program in grades 5-8.

Section 14. Teachers for Alternative Schools. A classroom teacher in an alternative school shall qualify on the basis of a certificate valid for classroom teaching.

Section 15. Instructional Technology Director. An instructional technology director shall qualify on the basis of a certificate valid for classroom teaching.

Section 16. Federal Grant Coordinator - School Level. A federal grant coordinator at the school level shall qualify on the basis of a certificate valid for classroom teaching.

Section 17. Job Training Partnership Act Teacher. A teacher in the JTPA Program shall qualify on the basis of a certificate valid for classroom teaching.

Section 18. Family Resource Center Director. A family resource center director shall qualify on the basis of a valid certificate issued by the Educational Professional Standards Board if the position is reported as certified.

Section 19. Migrant Advocate. A migrant advocate shall qualify on the basis of a certificate valid for classroom teaching.

Section 20. Home and Hospital Teacher. A home and hospital teacher shall qualify on the basis of a certificate valid for classroom teaching.

Section 21. Dean of Students. A dean of students shall qualify on the basis of an instructional leadership certificate - school principal.

Section 22. Testing Coordinator. A testing coordinator shall qualify on the basis of an individual intellectual assessment certificate, psychometrist certificate, supervisor certificate, or guidance certificate.

Section 23. District Assessment Coordinator. A district assessment coordinator shall qualify on the basis of certification as either a school superintendent, supervisor of instruction, or school principal.
Section 24. Highly-Skilled Educator. (1) A highly-skilled educator shall qualify on the basis of qualifications established by the Kentucky Department of Education pursuant to KRS 158.762 and 704 KAR 4.030. (2) (a) Successful experience as a highly-skilled educator since July 1, 1998 shall be considered administrative experience for purposes of advanced administrative certification. (b) The Education Professional Standards Board shall review the certification qualifications established in this subsection if any of the following requirements of the highly-skilled educator program are substantially revised by the General Assembly or the Kentucky Department of Education: 1. Selection criteria; 2. Training requirements; or 3. Functions and responsibilities.

Section 25. Athletic Director. An athletic director, if serving in a position paid from the certified salary schedule, shall qualify on the basis of a certificate valid for classroom teaching or for administration.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 23, 2005, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 5 work days prior to the hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2005. 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. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd 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 establishes the certification requirements for the positions in a local school district for which a specific certificate is not available.
(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 teaching and administrative certificates.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for obtaining and maintaining teaching and administrative certificates for positions which are not specifically covered under another administrative regulation promulgated by the board in KAR Title 16.
(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 adds the requirement that an individual serving in the position of athletic director, if paid from the certified salary schedule, have a certificate valid for classroom teaching or for administration.
(b) The necessity of this amendment to this regulation: This amendment will assist school districts in their need to have personnel who are certified in various areas be permitted to serve as athletic directors who are allotted time during the school to coordinate the athletic program for the school and/or the district.
(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. This amendment establishes the certification requirements for the position of athletic director.
(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that a properly credentialed person is employed in the position of athletic director.
(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 the position of athletic director.
(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.
(c) 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: 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 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
(Amendment)

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs.

RELATES TO: KRS 161.028, 161.030. 20 U.S.C. 1021-1030
STATUTORY AUTHORITY: KRS 161.028(1)(b), 161.030(2), 10(10).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(b) requires that an educator preparation institution be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030(2) and (10) require that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for accreditation of an educator preparation unit and
VOLUME 31, NUMBER 11 – May 1, 2005

approval of a program to prepare an educator.

Section 1. Definitions. (1) "AACTE" means the American Association of Colleges for Teacher Education.
(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2)-year period.
(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.
(4) [[9]] "EPSB" means the Education Professional Standards Board.
(5) [[4]] "NCATE" means the National Council for Accreditation of Teacher Education.
(6) [[6]] "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.
(7) [[6]] "State accreditation" means recognition by the EPSB that an institution has a professional education unit that has met accreditation standards as a result of review, including an on-site team review.
(8) "Third-year report" means the report summarizing the institutionally-prepared annual reports for a three (3)-year period and prepared by NCATE or the EPSB.

Section 2. Accreditation Requirements. (1) An institution offering an educator certification program or a program leading to a rank change:
(a) Shall be accredited by the state; and
(b) May be accredited by NCATE.
(2) State accreditation shall be:
(a) A condition of offering an educator certification program or a program leading to a rank change; and
(b) Based on the national accreditation standards which include the program standards enumerated in KRS 161.028(1)(b), and which are set out in the "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education" established by NCATE. The accreditation standards shall include:
1. Standard 1 - Candidate Knowledge, Skills, and Dispositions.
Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.
2. Standard 2 - Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicable qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.
3. Standard 3 - Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.
4. Standard 4 - Diversity. The unit designs, implements, and evaluates curriculum and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.
5. Standard 5 - Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.
6. Standard 6 - Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.
(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.
(4) All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Post-secondary Education under KRS 164.945-164.947 and 13 KAR 1:020 shall:
(a) Be accredited by the state through the EPSB under this administrative regulation as a condition of offering an educator certification program or a program leading to a rank change; and
(b) Comply with the EPSB Accreditation of Preparation Programs [Policy and Procedure].

Section 3. Developmental Process for New Educator Preparation Programs. (1) New educator preparation institutions requesting approval from the EPSB to develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation shall follow (a) and (b):
(a) Follow the four (4) stage developmental process established in this section to gain temporary authority to admit candidates; and
(b) Comply with the "Accreditation of New Teacher Preparation Institutions-Policy and Procedure".
(2) Stage One.
(a) The educator preparation institution shall submit an official letter from the chief executive officer and the governing board of the institution to the EPSB indicating their intent to establish an educator preparation program.
(b) The EPSB staff shall make a technical visit to the institution.
(c) The institution shall submit the following documentation:
1. Program descriptions required by Section 11 of this administrative regulation;
2. Continuous assessment plan required by Section 11 of this administrative regulation; and
3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.
(d) The EPSB shall provide for a copy of the research report prepared by the Reading Committee and the Continuous Assessment Review Committee.
(e) Following review of the documentation, EPSB staff shall make an additional technical visit to the institution.
(3) Stage Two.
(a) A board of examiners team shall make a one (1) day visit to the institution to verify the submission.
(b) The team shall be comprised of:
1. One (1) representative from a public postsecondary institution;
2. One (1) representative from an independent postsecondary institution; and
3. One (1) representative from the Kentucky Education Association.
(c) The team shall submit a written report of its findings to the EPSB.
(d) The EPSB shall provide a copy of the written report to the institution.
(e) The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.
(f) The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.
(g) The Accreditation Audit Committee shall review the materials gathered during Stages One and Two and make one (1) of the following recommendations to the [Program and Technical Assistance Work Group] of the EPSB with regard to temporary authorization:
1. Approval;
2. Approval with conditions; or
3. Denial of approval.
(4) Stage Three.
(a) The EPSB shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regard to temporary authorization:
1. Approval;
2. Approval with conditions; or
3. Denial of approval.
(b) An institution receiving approval or approval with conditions shall:
1. Hold this temporary authorization for two (2) years; and
2. Continue the developmental process and the first accreditation process established in this administrative regulation. (Continue the development process and the full initial accreditation process established in this administrative regulation; and
3. Hold this temporary authorization for two (2) years). (c) An institution denied temporary authorization may reapply. During the two (2) year period of temporary authorization, the institution shall:
   1. Admit candidates;
   2. Monitor, evaluate, and assess the academic and professional competency of candidates; and
   3. Report regularly to the EPSB on the institution's progress.
4. During the two (2) year period of temporary authorization, the EPSB:
   1. May schedule additional technical visits; and
   2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data.
   (5) Stage Four.
(a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with conditions of temporary authorization.
(b) All further accreditation activities shall be governed by the remaining sections of this administrative regulation, which govern the first accreditation of an educator preparation institution.

Section 4. Schedule and Communications. (1) The EPSB shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an onsite continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an onsite continuing accreditation visit at a seven (7) five (5) year interval.
(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president and to the chief academic officer. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.
(3) The EPSB shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPSB business meeting.
(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.
(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE accreditation shall give public notice of the upcoming visit.
(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about faculty and students in each approved program, progress made in addressing areas for improvement identified by its last accreditation evaluation, and major program developments in each NCATE standard (category of standards).
(b) The institution shall use the data system identified by [professional Education Data System for submitting required data to] the EPSB.
(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.
(b) The EPSB may pursue action against the unit based on data received in this report.
(3) The Reading Committee shall submit a biennial [third-year] report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee. (b) Nominations for the content program review committees shall be solicited from the education constituent [stakeholder] groups listed in Section 12 of this administrative regulation.
(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.
(b) A content program review committee shall examine program content and faculty expertise, and conceptual framework articulation.
(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.
(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment. (2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan for:
(a) Accuracy;
(b) Timeliness; and
(c) Conformity with the corresponding standards.
(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.
(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.
(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.
(3) For first accreditation, the Reading Committee shall:
(a) Review the preconditions documents prepared by the institution; and
(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.
(4) For continuing accreditation and program approval, the Reading Committee shall:
(a) Determine that a submitted material meets requirements;
(b) Ask that EPSB staff review with the institution a discrepancy or omission in the report or program;
(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or
(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.

(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response to the EPSB which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff to the EPSB Program and Technical Assistance Committee for recommendation to the full EPSB.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (18) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator...
preparation unit, as established in subsection (2) of this section.

(2) As a precondition for experiencing an on-site first [initial] evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:

(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel [A written description of the professional education unit outlines the unit's responsibilities and authority for the preparation of teachers and other professional education personnel]. Required documentation shall include:

1. A letter from the institution's chief executive officer that designates the unit as having [with primary authority and responsibility for professional education programs; and]
2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report should depict:

a. The degree or award levels for each program: [An organizational chart of the unit that includes the programs located administratively within the unit, including nontraditional, alternative, and off-campus programs;]

b. The administrative location for each program; and [The organizational chart or a second one (1)] shall indicate the relationship of the unit to other administrative units at the college or university;

c. The structure or structures through which the unit implements its oversight of all programs;

3. The unit's programs include off-campus programs, a separate chart or narrative as described above should be prepared for each location at which off-campus programs are geographically located [A list of all professional education programs offered by the institution, including nontraditional, alternative, and off-campus programs. The list shall indicate the geographic location of the programs and the degrees offered; and]

4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university [A chart depicting the structure of the unit within the institution and its oversight of nontraditional, alternative and off-campus programs].

(b) Precondition Number 2. A dean, director, or chair is officially designated as head of [to represent] the unit and is assigned the authority and responsibility for its overall administration and operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, by-laws, procedures, and student handbooks.

(d) Precondition Number 4. The unit has a well-developed [and] conceptual framework that establishes the shared vision for an unit's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:

1. The vision and mission of the institution and the unit;

2. The unit's philosophy, purposes, [professional commitments], and goals [dispositions];

3. Knowledge bases [basis] including theories, research, the wisdom of practice, and education policies that inform the unit's conceptual framework;

4. Candidate proficiencies aligned with the expectations [Performance-outcomes for candidates, including those in professional, state, and institutional standards; and]

5. A description of the system by which the candidate proficiencies described are [performance is] regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations [operation], the quality of its offerings, the performance of candidates, and the effectiveness of its graduates [scope, and quality of its offerings, and performance of candidates and graduates]. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)1 and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs, and can provide summary reports of candidate performance at exit [all initial-educator preparation and advanced programs]. Required documentation shall include:

1. A photocopy of published documentation [e.g., from a catalog or student teaching handbook, a program brochure or web page] listing the basic list of requirements for entry to, retention in, and completion of professional education programs offered by the institution [admission into all initial-teacher preparation and advanced programs, including any nontraditional, alternative and off-campus programs; and]

2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary should include:

a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and

b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include: [copies of the most recent approval letters from the EPSB and CPE attesting that state standards have been met, and listing approved programs;]

1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any programs not approved, the unit must provide a framework that is not currently accepting new applicants into the nonapproved program or programs. For programs that are approved with qualifications or are pending approval, the unit must describe how it will bring the program or programs into compliance;

2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examination exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this documentation, it should be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national recognition.

(i) Precondition Number 9. The institution is accredited, without probation or an equivalent status, by the appropriate institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current [regional] accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. [The report shall be submitted to the EPSB and to NCATE, if appropriate.] The narrative shall describe how changes relate [a change relates] to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall
provide the following information:

(1) The unit's conceptual framework for the preparation of school personnel which includes:
   (a) The mission of the institution and unit;
   (b) The unit's philosophy, purposes, professional commitments, and dispositions;
   (c) Knowledge bases, including theories, research, the wisdom of practice, and education policies;
   (d) Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards; and
   (e) The system by which candidate performance is regularly assessed;

(2) The unit's continuous assessment plan that provides:
   (a) An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;
   (b) Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;
   (c) Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit; and
   (d) A monitoring system for candidates from admission to exit;

(3) Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 703 KAR 4:100, and relevant state performance standards established in 16 KAR 1:101 or incorporated by reference into this administrative regulation;

(4)(a) Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards as established in 16 KAR 1:101; and
   (b) Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the New and Experienced Teacher Standards as established in 16 KAR 1:101;

(5) A list of faculty responsible for and involved with the conduct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and

(6) A curriculum guide sheet or contract provided to each student before or at the time of admittance to the program.

Section 12. Board of Examiners. (1) A Board of Examiners shall:

(a) Be recruited and appointed by the EPSB. The board shall be comprised of an equal number of representatives from three (3) constituent (constituent) groups:

1. Teacher educators;
2. P-12 teachers and administrators; and
3. State and local policymaker groups; and

(b) Include at least thirty-six (36) members representing the following constituencies:

1. Kentucky Education Association, at least ten (10) members;
2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and
3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:
   a. Kentucky Association of School Administrators;
   b. Persons holding positions in occupational education;
   c. Kentucky Branch National Congress of Parents and Teachers;
   d. Kentucky School Boards Association;
   e. Kentucky Association of School Councils;
   f. Kentucky Board of Education;
   g. Kentucky affiliation of a national specialty program association;
   h. Prichard Committee for Academic Excellence;
   i. Partnership for Kentucky Schools; and
   j. Subject area specialists in the Kentucky Department of Education.

(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs;

(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.

(4) The EPSB shall select and appoint for each scheduled on-site accreditation a team of examiners giving consideration to the number and type of programs offered by the institution. Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.

(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to be cochaired (chaired) by an NCATE appointed team member and a state team chair appointed by the EPSB [A state team chair shall be appointed by the EPSB for a decision on state accreditation and program approval and state report preparation]. The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2). The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.

(6) For an institution seeking state-only accreditation, the EPSB shall appoint a chair from a pool of trained Board of Examiners members.

(7) For state-only accreditation, the Board of Examiners shall have six (6) members.

(8) The EPSB shall make arrangements for the release time of a Board of Examiner from his place of employment for an accreditation visit.

Section 13. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

(1) The faculty handbook;
(2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance group impacting professional education;
(3) Faculty vitae (vita) or resumes;
(4) A random sample of graduates' transcripts;
(5) Conceptual framework documents;
(6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;
(7) Course syllabi;
(8) Policies, criteria and student records related to admission and retention;
(9) Samples of students' portfolios and other performance assessments;
(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;
(11) Student evaluations, including student teaching and internship performance; and
(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

Section 14. Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB shall conduct a previsit to the institution to make a final review of the arrangements. For an [a] NCATE-accredited institution, the previsit shall be coordinated with [the] NCATE [previsit].

Section 15. On-site Accreditation [Evaluation] Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation [evaluation] visit.

(2) The EPSB shall reimburse a state team member for travel,
lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the educator preparation institution.

(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution’s educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.

(4) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.

(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:
   (a) Met;
   (b) Met, with one (1) or more defined areas for improvement; or
   (c) Not met.
   (9)(a) The Board of Examiners shall review each program and cite the areas for improvement for each, if applicable.

(b) The Board of Examiners shall define the areas for improvement in its report.

(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.

(8) The on-site evaluation process shall end with a brief oral report:
   (a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or
   (b) By the state team chair for a state-only visit.

Section 16. Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as follows:

(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution.

(b) The first draft shall be typed and distributed to Board of Examiners members.

(c) A revision shall be consolidated by the Board of Examiners chair who shall send the next draft to the unit head to review for factual accuracy.

(d) The unit head shall submit written notification to the EPSB confirming receipt of the draft.

(e) The unit head shall submit to the Board of Examiners chair within five (5) working days either:
   1. A written correction to the factual information contained in the report; or
   2. Written notification that the unit head has reviewed the draft and found no factual errors.

(f) The Board of Examiners chair shall submit the final report to the EPSB and a copy to each member of the Board of Examiners.

(g) The final report shall be printed by the EPSB and sent to the institution and to the Board of Examiners members within thirty (30) working days of the conclusion of the on-site visit.

(2) For a joint state/NCATE visit, the evaluation report shall be prepared and distributed as follows:

(a) The NCATE chair shall be responsible for the preparation, editing, and corrections to the NCATE report.

(b) The state chair shall be responsible for the preparation, editing, and corrections of the state report in the same manner established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE continuing accreditation visits shall be prepared in accordance with the Board of Examiners Report Format for State/NCATE Accreditation Visits.

Section 17. Institutional Response to the Evaluation Report. (1)(a) The institution shall acknowledge receipt of the evaluation report within thirty (30) working days of receipt of the report.

(b) If desired, the institution shall submit within thirty (30) working days of receipt of the report a written rejoinder to the report which may be supplemented by materials pertinent to a conclusion found in the evaluation report.

(c) The rejoinder and the Board of Examiners report shall be the primary documents reviewed by the Accreditation Audit Committee and EPSB.

(d) An unmet standard or area of improvement statement cited by the team may be recommended for change or removal by the Accreditation Audit Committee or by the EPSB because of evidence presented in the rejoinder. The Accreditation Audit Committee or the EPSB shall not be bound by the Board of Examiners decision and may reach a conclusion different from the Board of Examiners or NCATE.

(2) If a follow-up report is prescribed through accreditation with conditions, the institution shall follow the instructions that are provided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation results, the procedure established in Section 22 of this administrative regulation shall be followed.

Section 18. Accreditation Audit Committee. (1) The Accreditation Audit Committee shall be a committee of the EPSB, and shall report to the full EPSB [reporting to the Program and Technical Assistance Work Group of the board]. The EPSB shall appoint the Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2) classroom teachers, appointed from nominees provided by the Kentucky Education Association;

(c) Two (2) teacher education representatives, one (1) from a state-supported institution and one (1) from an independent educator preparation institution, appointed from nominees provided by the Kentucky Association of Colleges for Teacher Education; and

(d) Two (2) school administrators appointed from nominees provided by the Kentucky Association of School Administrators.

(2) The chairperson of the EPSB shall designate a member of the Accreditation Audit Committee to serve as its chairperson [and report to the Program and Technical Assistance Work Group].

(3) An appointment shall be for a period of four (4) years except that three (3) of the initial appointments shall be for a two (2) year term. A member may serve an additional term if renominated and reappointed in the manner established for membership. A vacancy shall be filled as it occurs in a manner consistent with the provisions for initial appointment.

(4) A member of the Accreditation Audit Committee shall be trained by NCATE or in [by any NCATE-approved training [trainer]. Following an on-site accreditation visit, the Accreditation Audit Committee shall review the reports and materials constituting an institutional self-study, the report of the evaluation team, and the institutional response to the evaluation report. The committee shall then prepare a recommendation for consideration by the EPSB [Program and Technical Assistance Work Group].

(a) The committee shall review procedures of the Board of Examiners to determine whether approved accreditation guidelines were followed.

(b) For each institution, the committee shall make a recommendation with respect to the accreditation of the institutional unit for educator preparation as well as for approval of the individual programs of preparation.

(c) For first accreditation, one (1) of four (4) [three (3)] recommendations shall be made:

   1. Accreditation;
   2. Provisional accreditation; or
   3. Denial of accreditation; or
   4. Revocation of accreditation.

(d) For regular continuing accreditation, one (1) of four (4) [three (3)] recommendations shall be made:

   1. [Continuing] Accreditation;
   2. Accreditation with conditions; or
   3. Accreditation with probation; or
   4. Revocation of accreditation.

(6) For both first and continuing accreditation, the Accreditation
Audit Committee shall review each program report including a report from the Reading Committee, Board of Examiners, and institutional response and shall make one (1) of three (3) recommendations for each individual preparation program to the EPSB:

[Program and Technical Assistance Work Group]:
(a) Approval;
(b) Approval with conditions; or
(c) Denial of approval.

(7) The Accreditation Audit Committee shall compile accreditation data and information for each Kentucky institution that prepares school personnel. It shall prepare for the EPSB reports and recommendations regarding accreditation standards and procedures as needed to improve the accreditation process and the preparation of school personnel.

Section 19. Official State Accreditation Action by the Education Professional Standards Board. (1) A recommendation from the Accreditation Audit Committee shall be presented to the full EPSB [Program and Technical Assistance Work Group] which shall make a recommendation to the full board.

(2) The EPSB shall consider the findings and recommendations of the Accreditation Audit Committee [Program and Technical Assistance Work Group] and make a final determination regarding the state accreditation of the educator preparation unit.

(3) Decision options following a first accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in the EPSB's action report.

2. The next on-site visit shall be scheduled five (5) years following the semester of the visit.

(b) Provisional accreditation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. The unit has accredited status but shall satisfy provisions by meeting each previously-unmet standard. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the accreditation decision, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted. When the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused (provisional) visit, the EPSB shall decide to:

a. Accredit; or
b. Revoke (Deny) accreditation.

2. If the unit is accredited, the next on-site visit shall be scheduled for five (5) years following the semester of the first accreditation visit; or

(c) Denial of accreditation. This accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems [has severe or numerous deficiencies] that limit its capacity to offer quality programs that adequately prepare candidates.

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.

(4) Decision options following a continuing accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in EPSB's action report.

2. The next on-site visit shall be scheduled for seven (7) [five (5)] years following the semester of the visit.

(b) Accreditation with conditions.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. If the EPSB renders this decision, the unit shall maintain its accredited status, but shall satisfy conditions by meeting previously unmet standards. EPSB shall require submission of documentation that addresses the unmet standard or standards within six (6) months of the decision to accredit with conditions, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. When the EPSB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPSB shall decide to:

a. Continue accreditation; or
b. Revoke accreditation.

2. If the EPSB renders the decision to continue accreditation, the next on-site visit shall be scheduled for five (5) years following the semester in which the continuing accreditation visit occurred.

3. If the EPSB renders the decision to accredit with probation, the institution shall schedule a comprehensive on-site visit within two (2) years of the semester that the accreditation with probation decision was rendered.

(c) Accreditation with probation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates [has serious and significant areas for improvement related to the NCATE standards]. As a result of the continuing accreditation review, the EPSB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The institution shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. This visit shall mirror the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point. Following the on-site review, the EPSB shall decide to:

a. Continue accreditation; or
b. Revoke accreditation.

2. If accreditation is continued, the next on-site visit shall be scheduled for five (5) years after the semester of the probationary visit.

(d) Revocation of accreditation. Following a comprehensive site visit that occurs as a result of an EPSB decision to accredit with probation or to accredit with conditions, this accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates.

1. No longer meets preconditions to accreditation, including but not limited to loss of state approval or regional accreditation;
2. Misrepresents its accreditation status to the public;
3. Falsely reported data or plagiarized information submitted for accreditation purposes; or
4. Fails to submit annual reports or other documents required for accreditation.

(5) Notification of EPSB action to revoke continuing accreditation or deny first [initial] accreditation, including failure to remove conditions, shall include notice that:

(a) The institution shall inform students currently admitted to a certification or rank program of the following:

1. A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPSB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank; and
2. A student who does not meet the criteria established in subparagraph 1 of this paragraph shall transfer to a state accredited education preparation unit in order to receive the certificate or advancement in rank; and

(b) An institution for which the EPSB has denied or revoked [revoked or denied] accreditation shall seek state accreditation.
through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPSB no earlier than two (2) years following the EPSB action to revoke or deny state accreditation.

Section 20. Program Approval Action Outside the First or Regular Continual Accreditation Cycle. (1) Approval of a program shall be through the program process established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPSB prior to admission of a student to the program.

(2) For a new or substantially revised program, the EPSB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee and the Reading Committee.

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to the Program and Technical Assistance-Work-Group which shall make a recommendation to the full EPSB.

(4) Program approval decision options shall be:
   (a) Approval, with the next review scheduled during the regular accreditation cycle unless a substantial revision is made;
   (b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit. At the end of the extension, the EPSB shall decide that the documentation supports:
      1. Approval; or
      2. Denial of approval; or
   (c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.

(5) The EPSB shall order review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPSB "Emergency Review of Certification Programs Procedure [Procedure for Emergency Review of Certification Programs]" policy incorporated by reference. The on-site review shall be conducted by EPSB staff and a Board of Examiners team. The review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Accreditation Audit Committee as the basis for a recommendation to the Program and Technical Assistance-Work-Group and to the full EPSB [board].

   (a) Approval;
   (b) Approval with conditions; or
   (c) Denial of approval for the program.

(6) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:
   (a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and
   (b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.

Section 21. Public Disclosure. (1) After a unit and program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the board for the meeting in which the official action was taken by the EPSB.

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall on request provide a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations [organization] or individuals [individual].

Section 22. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:
   (a) A prescribed standard was disregarded;
   (b) A state procedure was not followed; or
   (c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Board of Examiners who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc committee shall recommend action on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 23. Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(a) (1)(f), (1)(g) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028 [Policy and Procedure]" as a condition of offering an educator certification program or program leading to a rank change.

(2) The EPSB may waive any section, or part thereof, of this administrative regulation that the EPSB determines is unduly restrictive to the development and implementation of the alternative route program.

Section 24. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1027 and 1028, the EPSB [Education Professional Standards Board] shall identify an educator preparation unit as:
   (1) "At-risk of low performing" if an educator preparation program has received a:
      (a) State accreditation rating of "provisional";
      (b) State accreditation rating of "accreditation with conditions";
      (c) [iii] Quality Performance Index of "Poor Performance" established in Section 25 of this administrative regulation; or
   (2) "Low performing" if an educator preparation program has received a:
      (a) State accreditation rating of "accreditation with probation";
      (b) Quality Performance Index of "Very Poor Performance" established in Section 25 of this administrative regulation.

Section 25. The Education Professional Standards Board shall produce a state report card, which shall include:
   (1) General information on the institution and the educator preparation unit;
   (2) Contact information for the person responsible for the educator preparation unit;
   (3) Type or types of accreditation the unit holds;
   (4) Current state accreditation status of the educator preparation unit;
   (5) Year of last state accreditation visit and year of next scheduled visit;
   (6) Table of the unit's approved certification program or programs;
   (7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for last three (3) years;
   (8) Tables relating the unit's faculty disaggregated by FTE, ethnicity, and gender for last three (3) years;
   (9) Table of the number of program completers (teachers and administrators) for the last three (3) years;
   (10) Table relating pass rates on the required assessments;
   (11) Table relating pass rates for Kentucky Teacher Internship Program;
   (12) Table relating pass rates for Kentucky Principal Internship

- 1861 -
Program (if applicable); (10) Table indicating student teacher satisfaction with preparation program; (11) Table relating teacher intern satisfaction with preparation program; (12) Table relating new teacher (<3 years) and supervisor satisfaction with preparation program; (13) Table aggregating quality performance indicators established in this section and the standards established in Section 2 of this administrative regulation; (14) Hyperlinks to various supporting documents; and (15) A Quality Performance Index (QPI) for each educator preparation unit. The Quality Performance Index shall comply with the provisions established in this subsection.

(a) The Quality Performance Index shall provide an indicator of the overall performance of the educator preparation unit.
(b) The Quality Performance Index shall be a calculation of three (3) separate performance measures:
   1. Annual summary PRAXIS II pass rate;
   2. Overall mean score on the Kentucky Educator Preparation Program new teacher survey; and
   3. Three (3) year average pass rate on the Kentucky Teacher Internship Program.

(c) 1. Performance points shall be assigned to the outcome of each of the three (3) performance measures and each multiplied by specific performance weights.
   2. The sum of the product shall be divided by the sum of the performance weights.
   3. The resulting quotient produces the Quality Performance Index.

(d) The Quality Performance Index shall be divided into four (4) [five (5)] performance categories:
   1. A score of 4.0 to 3.60 (3.61-3.67) shall indicate "Excellent Performing [Performance];"
   2. A score of 3.49 to 3.00 shall indicate "Satisfactory Performing [Good Performance];"
   3. A score of 2.99 to 2.66 shall indicate "Fair Performance;"
   4. A score of 2.59 to 2.07 shall indicate "At Risk of Low Performance [Poor Performance];" and shall identify the educator preparation unit as "at-risk of low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation; and
   5. A score of less than 2.07 shall indicate "Low Performing [Very Poor Performance];" and shall identify the educator preparation unit as "low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation.

(e) The performance points and performance weights are established in the "Quality Performance Index Calculation" document incorporated by reference.

Section 26. Approval of On-line Programs. Initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program's state of origin.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:
(c) [and Education Professional Standards Board;]
(d) "Accreditation of New Teacher Preparation Institutions Policy and Procedure", September 1998, Education Professional Standards Board;
(e) "Accreditation of Preparation Programs [Policy and Procedure", August 2002 [November-1998], Education Professional Standards Board;
and periodically reviewed by the EPSB.

(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 updates the language and terminology used in the regulation, requires that all initial and continuing on-line preparation programs must be accredited or approved by the state of origin as well as by a regional or national accreditation agency, incorporates by reference the current editions of previously incorporated material as well as the Education Professional Standards Board's "Kentucky's Safety Educator Standards for Preparation and Certification", May 2004, the National Association of School Psychologists Standards for Training a Field Placement Program in School Psychology: Standards for the Credentialing of School Psychologists, July 2000, and Kentucky's Standards for Guidance Counseling derived from the Council for Accreditation of Counseling and Related Educational Program Standards, November 2004, and modifies the Quality Performance Index (QPI) from a 5 level scale to a 4 level scale.

(b) The necessity of this amendment to this regulation: The amendment incorporates current practice and aligns the standards for preparation programs with national standards as is required by KRS 161.028(1)(b). The amendment ensures that with the increase in the number of on-line providers and institutions that the on-line program has gone through a state approval process. The amendment provides for a more appropriately scaled QPI which accurately reflects the higher education institutions' level of performance.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes, 161.028 and 161.030, govern the certification of professional school personnel and grant the Education Professional Standards Board certification authority and the responsibility approving educator preparation programs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the standards and procedures for educator preparation program approval to more effectively insure that the state's new educators are properly prepared for the profession.

(3) 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 certifications.

(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 will be positively affected by the availability of properly certified educators to train the best practices in the profession. It positively affects applicants by ensuring that state's educator preparation programs are appropriately preparing them for the certification process as well as providing them with the tools they need to be successful educators. The educator preparation programs will be positively affected by the adoption of the new preparation program standards that they have helped to develop.

(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 allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, educator preparation programs, or school districts.

(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 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
(Amendment)

16 KAR 6:010. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.023(1), 161.030(3), (4)
STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(a) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification, 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.

(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) - 148 [443];
(b) Middle School Science (0439) - 139;
(c) Middle School English Language Arts (0049) - 160 [463]; or
(d) Middle School Social Studies (0089) - 152 [444].

(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 each 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
VOLUME 31, NUMBER 11 – May 1, 2005

(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 (0542) - 172. Beginning September 1, 2006, Education of 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) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; 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) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; 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) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Education of Deaf and Hard of Hearing Students (0271) - 167; and
3. One (1) 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) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Teaching Students with Visual Impairments (0280) - 700 [660];
5. An 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. From January 24, 2005 through August 31, 2005, Biology: Content Knowledge Part 1 (0231) - 156; and
2. Biology: Content Essays (0233) - 141; or
3. Biology: Content Knowledge (0235) - 146;
4. Beginning September 1, 2005, Biology: Content Knowledge (0235) - 146;
(b) Chemistry:
1. From January 24, 2005 through August 31, 2005, General Science: Content Knowledge Part 2 (0432) - 146; and
2. Chemistry: Content Knowledge (0241) - 138;
3. Chemistry: Content Knowledge (0245) - 147;
4. Beginning September 1, 2005, Chemistry: Content Knowledge (0245) - 147;
(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) - 160 [166];
(e) Mathematics:
1. Mathematics: Content Knowledge (0061) - 125; and
2. Mathematics: Proofs, Models, and Problems (0065) - 141;
(f) Physics:
1. From January 24, 2005, through August 31, 2005, General Science: Content Knowledge, Part 2 (0432) - 146; and
2. Physics: Content Knowledge (0261) - 114; or
3. Physics: Content Knowledge (0265) - 133;
4. Beginning September 1, 2005, Physics: Content Knowledge (0265) - 133;
(g) Earth science:
1. From January 24, 2005, through August 31, 2005, General Science: Content Knowledge, Part 2 (0432) - 146; and
2. Earth Science: Content Knowledge (0571) - 145.
4. Beginning September 1, 2005, Earth Science: Content Knowledge (0571) - 145;
6. 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. Art Content Knowledge (0133) - 151 [154]; and
2. Art Making (0131) - 154;
(b) French:
1. French: Content Knowledge (0173) - 158; and
2. French: Productive Language Skills (0174) - 167;
(c) German: German: Content Knowledge (0181) - 157;
(d) Health: Health Education (0550) - 630;
(e) Latin: Latin (0600) - 700 [630];
(f) Integrated music:
1. Music: Content Knowledge (0113) - 154 [156]; and
(g) Vocal music:
1. Music: Content Knowledge (0113) - 154 [156]; and
(h) Instrumental music:
1. Music: Content Knowledge (0113) - 154 [156]; and
(i) Physical education:
1. Physical Education: Content Knowledge (0091) - 147; and
2. Physical Education: Movement Forms-Analysis and Design (0092) - 151;
(j) Spanish:
1. Spanish Content Knowledge (0191) - 160; and
2. Spanish: Productive Language Skills (0192) - 168; or
(k) School Media Librarian: Library Media Specialist (0310) - 640.
8. 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) - 600 [640];
   (c) Family and Consumer Sciences - Home Economics Education (0120) - 600 [670];
   (d) Technology Education - Technology Education (0050) - 600; or
   (e) Industrial education. An applicant for industrial education with one (1) or more trade and industry specializations shall complete the assessments established in 16 KAR 6:020.
9. 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 (0360) - 620;
   (b) Speech/Media Communications: Speech Communication (0220) - 580; or
   (c) Theater: Theatre (0640) - 630.
10. 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:
   (a) English as a Second Language: English to Speakers of Other Languages (0360) - 620; or
   (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. 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. If an individual is seeking additional certification in any area, the applicant need only take one (1) of the pedagogy tests identified in this administrative regulation.

(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;

(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;

(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;

(c) Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

Section 4. 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 the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete 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 shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:

(a) The Educational Testing Service;

(b) The Education Professional Standards Board for special administration;

(c) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize 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)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) 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. An applicant shall pay the appropriate examination fee for each relevant test required to be taken.

Section 7. 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 administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 23, 2005, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2005. 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. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd 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 establishes the written examination prerequisites and the corresponding passing scores for teacher certification.

(b) The necessity of this administrative regulation: KRS 161.020, 161.028, and 161.039 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 and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining 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 catalogues the required assessments and the acceptable score for each teacher certification.
(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 (Amendment)


RELATES TO: KRS 161.020, 161.027, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.027
Necessity, function, and conformity: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal, and further requires that each applicant for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board. This administrative regulation establishes the examination requirements for certification as principal required under KRS 161.027.

Section 1. (1) The certificate for school principal shall be valid for serving in the position of principal or assistant principal. A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1) year internship program if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) School Leaders Licensure Assessment established - 170 [465] and

(2) Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses.

Section 3. The requirement to successfully complete the School Leaders Licensure Assessment shall not be waived for an applicant who has:

(1) Two (2) years of experience as a certified principal in another state; and

(2) Successfully completed a nationally administered test in the area of educational leadership and administration.

Section 4. (1) An applicant for certification as principal shall take the required School Leaders Licensure Assessment on a date established by the ETS. An applicant shall authorize that test results be forwarded to the Education Professional Standards Board by the ETS.

(2) An applicant for certification as principal shall take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the Education Professional Standards Board. Scoring and reporting of scores shall be the responsibility of the Education Professional Standards Board or its designated agent.

(3) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the ETS and the Education Professional Standards Board.

(4) An applicant shall seek information regarding the dates and location of the test and make application for the appropriate examination prior to the deadline established and sufficiently in ad-
vance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 5. (1) For the required School Leaders Licensure Assessment, the applicant shall pay all fees assessed by the ETS.
(2) For the Kentucky Specialty Test of Instructional and Administrative Practices, and applicant shall pay a fee of:
(a) Thirty (30) dollars if the test is taken before September 1, 2004; or
(b) eighty (80) dollars if the test is taken on or after September 1, 2004.

Section 6. An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 7. A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 8. (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.
(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.
(3) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 9. (1) To provide for confidentiality of information, the Education Professional Standards Board shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant. The scores shall not be released to other individuals or agencies.
(2) A score shall not be used by the Education Professional Standards Board in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 10. On an annual or biennial basis, the Education Professional Standards Board shall collect and analyze data provided by the Educational Testing Service through score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 23, 2005, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, five working days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2005. 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. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd 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 establishes the written examination prerequisites and the corresponding passing scores for principal certification.
(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 and to set the standards for and approve university programs for the preparation of teachers and other professional school personnel. KRS 161.030 rests the responsibility of selecting assessments and determining 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 delineates the examination requirements for principal 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: The amendment modifies the passing score for the School Leadership Licensure Assessment from 155 to 170 and removes surplus language.
(b) The necessity of this amendment to this regulation: The amendment adjusts the passing score keep it within the 15th to 25th national percentile range as set by the EPSB in May 1999.
(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. This amendment establishes the required passing score on the School Leaders Licensure Assessment for Kentucky Principal certification.
(d) How the amendment will assist in the effective administration of the statutes: The amendment updates the passing scores to more accurately reflect an educator’s preparedness for certification for principal.
(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 principal certification.
(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 will be positively affected by the availability of properly certified principals whose training reflects best practices in the profession. It provides applicants with the information they will need to prepare to pass the appropriate assessment prior to certification. The educator preparation programs will be affected by properly educating their students teachers so that they will be able to pass the required assessment(s).
(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 allocated or necessary for continuing implementation of regulation. There is no additional cost to previously certified educators, educator 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 regulation, if new, or by the change, if it is an amendment: No additional increases in fees or funding will be necessary.

(a) 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
(Amendment)

16 KAR 7:010. Kentucky Teacher Internship Program.

RELATES TO: KRS 161.028, 161.030, 161.048
STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030, 161.1222

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(5) requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking initial certification in Kentucky shall serve a one (1) year internship. KRS 161.1222(1) authorizes the Education Professional Standards Board to implement a pilot [two (2)-year] internship program [projects]. This administrative regulation establishes the requirements for the Kentucky Teacher Internship Program and the Kentucky Teacher Internship Pilot Project.

Section 1. Definitions. (1) "Half-time basis" means teaching fifteen (15) hours per week.

(2) "Instructional day" means a day that:
(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school; and
(b) Does not include annual leave, sick leave, or other authorized or unauthorized leave time.

(3) "Resource Teacher Time Sheet" means a copy of the document of the same name that is contained on the Education Professional Standards Board (EPSB) Web site, epsb.ky.gov and in the publication, Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants.

(4) "Teacher intern" means any new teacher or out-of-state teacher with less than two (2) years of successful teaching experience, preschool through grade twelve (12), who has obtained a provisional certificate and is seeking initial certification in Kentucky.

Section 2. Basis for Professional Judgment by the Beginning Teacher Committee. (1) A teacher intern and the beginning teacher committee shall follow the requirements established in this administrative regulation and in "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants".

(2) In arriving at its professional judgment, the beginning teacher committee shall take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship. The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:
(a) A systematic observation of classroom performance;
(b) An ongoing review of portfolio materials or pilot project Teacher Work Sample that shall be developed by the teacher intern; and
(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.

(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the new teacher standards for Preparation and Certification established by the Education Professional Standards Board in 16 KAR 1:010.

Section 3. Beginning Teacher Committee Membership Appointment. (1)(a) School districts shall maintain a pool of resource teachers and principals who have successfully completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(b) The Kentucky Teacher Internship Program Committee training may be approved for up to twelve (12) hours of professional development credit toward the continuing education requirements for resource teachers pursuant to KRS 161.095 and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.

(2) The employing school district shall recommend principals and resource teachers for appointments by the Education Professional Standards Board to beginning teacher committees.

(3) If the teacher intern is teaching at a nationally or regionally accredited nonpublic school without a principal, the accrediting organization's guidelines for designating the school head or school leader shall be used by the employing school in making the recommendation for appointment of the principal member. If no guidelines exist, the school shall provide a written rationale for the appointment to the Education Professional Standards Board for approval.

(4) Representatives of the teacher training institution shall consult the Education Professional Standards Board with the school districts and the geographical area to be served by teacher educator members on beginning teacher committees. All teacher educators shall have completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(5) The teacher training institution shall appoint a teacher educator no later than October 1 for the fall semester and February 15 for the spring semester. If the teacher intern is employed after the date required for appointment of the teacher educator, the teacher training institution shall appoint a teacher educator no later than ten (10) days after being notified by the district of the need for a teacher educator.

(6) If the superintendent or designated nonpublic school head or leader determines that a teacher educator is unsuitable for appointment, the superintendent or designated nonpublic school leader head or shall submit a written request for removal to the Education Professional Standards Board. The request shall contain the following:
(a) The facts and circumstances that form the basis for removal for cause; and
(b) The name of a qualified replacement submitted after consultation with the district or employing school Kentucky Teacher Internship Program Coordinator.

(7) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.

Section 4. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship shall be completed during one (1) of the following:
(a) No less than 140 instructional days of employment in a certified position for which the teacher intern receives compensation during one (1) school year; or
(b) Two (2) semesters totaling at least 140 instructional days of employment in a certified position for which the teacher intern receives compensation in two (2) consecutive school years.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except if the date of employment does not allow for completion of at least seventy (70) instructional days of employment during the school year. If the period of employment is less than seventy (70) instructional days in a school year, the local school district shall
declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate. The employing school district shall be responsible for providing assistance and supervision to the new teacher during the period of employment under an emergency certificate.

3(a) The school district shall complete the Confirmation of Employment in electronic format or in hard copy if the electronic submission system is unavailable. The Confirmation of Employment shall be completed [its electronic equivalent] for each teacher intern and submitted [submit— it] to the Education Professional Standards Board:
1. On or before October 15 for a teacher intern participating in the internship for the fall semester; or
2. On or before February 15 for a teacher intern participating in the internship for the spring semester.

(b) If the teacher intern begins employment after the dates established in paragraph (a) of this subsection, the school district or employing school shall submit the Confirmation of Employment form or its electronic equivalent within ten (10) days of the date of hire. A one (1) year internship certificate shall be issued in accordance with the provisions of 18 KAR 2:010, or 18 KAR 2:005.

(c) The district shall report verification of enrollment in the internship by the applicable date established in paragraph (a) or (b) of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days required under subsection (1) of this section, the district shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the internship in the next semester of employment when at least seventy (70) instructional days are available.

(d) Failure to return the completed Confirmation of Employment or declare an emergency in accordance with paragraph (a) or (b) of this subsection shall:
1. Be deemed a violation of KRS 161.020; and
2. Result in the number of days the teacher intern taught without a valid certificate being included in the out of field report submitted to the Commissioner of the Department of Education in accordance with KRS 161.1221.

4. A teacher intern may participate in the internship if the intern [he] is teaching on at least one half-time basis. A school district offering employment to a new teacher for part-time services which do not conform to the definition of half-time basis shall request a waiver from the Education Professional Standards Board staff for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall detail how the part-time employment offered by the district is commensurate with the half-time basis requirement of this administrative regulation.

5(a) Termination or resignation of the internship shall be prohibited unless a written resignation detailing the facts surrounding the resignation is received and approved by:
1. The superintendent or designated nonpublic school head or leader; and
2. The Education Professional Standards Board staff.

(b) A teacher intern who terminates or resigns the internship without the approval of the Education Professional Standards Board staff shall be recorded as unsuccessfully completing the internship for that school year.

(c) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern. An internship shall not be established in a classroom designated as an alternative school, classroom or program unless the district superintendent or designated nonpublic school head or leader submits a written request for a waiver to the staff of the Education Professional Standards Board. The request shall include the following:
(a) The type of students that attend the alternative school, classroom or program;
(b) The student selection and placement process;
(c) The level of support for students and faculty provided by the district;
(d) The degree of administrative support within the program, classroom or school;
(e) The location and facility that houses the program, classroom or school;
(f) The instructional resources that are available to the faculty;
(g) The curriculum used by the program, classroom or school;
(h) The manner in which the program, classroom or school collaborates with other schools within the district;
(i) The current faculty and staff positions assigned to the program, classroom or school;
(j) A brief description of how a teacher intern placed in the alternative program, classroom or school could demonstrate that the teacher intern has met all of the new teacher standards;
(k) Contact information for an individual who could provide additional information about the request; and
(l) A signed affidavit by the superintendent, the superintendent’s designee, or the designated nonpublic school head or leader confirming the information.

(c) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that the level of support and services provided to the teacher intern assigned to an alternative school, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting.

(d) If the waiver is granted, it shall remain in effect for the calendar year during which it is granted.

Section 5. Designation and Duties of Chairperson. Responsibilities of Resource Teacher, [Responsibilities of Teacher Intern, and Teacher Educator; Requirements for Timing and Content of Beginning Teacher Committee Meetings. (1) The principal member of the three (3) person beginning teacher committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts by scheduling observations and committee meetings. A chair shall be responsible for the timely submission of all documents and reports of the beginning teacher committee as required by this administrative regulation. All documents and reports shall be submitted through the electronic reporting system, or by hard copy if the electronic reporting system is unavailable. In addition, the chair shall:
(a) Make three (3) official [one—three]—hour observation visits to the teacher intern’s classroom with each observation lasting one (1) hour in duration or one (1) class period; or
(b) Two (2) one (1) hour or one (1) class period observation visits followed by an observation of [one—three] the teacher intern’s one (1) hour or one (1) class period videotaped classroom lesson.

(2) Conduct a lesson plan review prior to each of the three (3) observations and a postobservation conference after each observation;

(c) Report progress observed and concerns to the committee at the scheduled committee meetings;

(d) Monitor the time that the resource teacher spends with the teaching class both in and out of class and sign the electronic version of the resource teacher time sheets if the electronic reporting system is unavailable; and

(e) Ensure that all program policies and procedures are followed.

(2) The resource teacher shall be a mentor to the teacher intern and assess the teacher intern’s progress in the internship.

(a) The resource teacher, upon completion of Kentucky Teacher Internship Program Committee Training and upon appointment, shall begin to render assistance to the teacher intern.

(b) The resource teacher shall spend a minimum of twenty (20) hours working with the teacher intern in the classroom setting.

3. As a portion of the twenty (20) hours, the resource teacher shall conduct:
(a) Three (3) official [one—three]—hour observations with each observation lasting one (1) hour in duration or one (1) class period; or
(b) Two (2) [one—three]—hour observations lasting one (1) hour in duration or one (1) class period following an observation of one (1) the teacher intern’s one (1) hour or one (1) class period videotaped classroom lesson.

2. The observations shall be preceded by a lesson plan review and shall be concluded with a postobservation conference.

(c) Pursuant to the resource teacher requirements established in KRS 161.030(7), a resource teacher shall complete at least fifty (50) hours of out-of-class time identified in KRS 161.030 in consultation with the teacher intern to:
1. Assist the teacher intern in the development of professional growth plan;
2. Assist the teacher intern in areas identified in the professional growth plan;
3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;
4. Arrange activities for the teacher intern such as attendance at seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern's professional growth plan;
5. Continually assess the teacher intern's progress in the internship in relation to each of the new teacher standards;
6. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable [internship performance records for all committee members. The resource teacher may record a maximum of three (3) hours for this activity on the resource teacher time sheet].
(d) The resource teacher shall divide the consultation time required paragraph (c) of this subsection into appropriate increments that provide support for the teacher intern throughout the semester. The time required by the intern shall not exceed this required consultation time with the teacher intern at required school or district-wide meetings, or any other activity for which the resource teacher receives compensation from [form] the district or employing school to include professional development activity.
(3) The teacher intern shall:
(a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 157.100 and this administrative regulation, including compliance with the new teacher standards;
(b) Attend the orientation, preobservation and postobservation conferences with individual committee members, and all beginning teacher committee meetings;
(c) Participate with the resource teacher in the fifty (50) hours of consultation time to be spent outside of an instructional setting;
(d) Cooperate with the resource teacher in completing the twenty (20) hours of instructional observation; and
(e) Complete a professional growth plan (PGP);
(f) Prepare for three (3) official one (1) hour observations by each committee member during the year, including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period; and
(g) Develop a portfolio or Pilot Project Teacher Work Sample for presentation and review at committee meetings.
(h) Review all ehonc documents completed by the beginning teacher committee and affix an electronic signature where required. If the electronic version of the documents are unavailable through the electronic reporting system, the teacher intern shall review and sign hard copy versions of these documents.
(4) The teacher educator shall:
(a) Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or
Two (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons;
(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each observation;
(c) Report progress observed and concerns to the committee at the scheduled committee meetings;
(d) Observations and committee meetings shall be scheduled in accordance with the following:
(a) The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;
(b) The second meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting and shall have been preceded by classroom observations by all committee members;
(c) The third meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting and shall have been preceded by a second set of classroom observations by all committee members; and
(d) The fourth meeting shall be held between 111 and 140 instructional days following the orientation meeting and shall have been preceded by a third set of classroom observations by all committee members.
(5) Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (4) of this section for the full-year teacher intern but which shall span the spring and fall semesters of two (2) school years.
(6) [(a)] Classroom observations conducted by committee members shall be:
1. Of at least one (1) hour or one (1) class period in duration; and
2. In the classroom or at the work station of the teacher intern.
(b) Additional classroom observations may be conducted at the option of the committee.
(c) All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.
(7) [(a)] All members of the committee shall attend all four (4) meetings of the committee.
(b) [(i)] At the orientation meeting of the beginning teacher committee, the following items shall be addressed:
(a) Expectations on the part of the teacher intern and each committee member;
(b) Procedures and materials for classroom observations;
(c) Use of classroom observation data in designing the teacher intern's professional growth plan;
(d) Requirements for the intern portfolio or Pilot Project Teacher Work Sample;
(e) General schedule for the events to take place during the internship program; and
(f) Work of the resource teacher with the teacher intern.
(9) [(a)] The primary purpose of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the portfolio or Pilot Project Teacher Work Sample, and reports of the resource teacher that shall support the growth of the teacher intern.
(b) The committee shall provide the teacher intern at the second, third, and fourth meetings with a consensus assessment of the teacher intern's progress in the internship in relation to each of the new teacher standards.
(11) [(a)] The Professional Growth Plan (PGP) shall be initiated at the second committee meeting.
(12) [(i)] The third meeting shall include a review of expectations for the performance of the teacher intern, taking into account the reflections of the teacher intern and the committee members, and incorporating these expectations and reflections into the PGP.
(13) [(i)] The fourth meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship. This judgment shall be based upon the teacher intern's ability to meet the requirements of all new teacher standards.

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions. (1) The decision of the beginning teacher committee as to satisfactory completion of the internship for all full-year teacher interns shall be reported to the chair of the local school superintendent or other employer and to the Education Professional Standards Board by May 1 or no later than two (2) weeks following the final committee meeting, whichever occurs first. For midyear teacher interns completing the internship in December, the final report shall be submitted by December 15. The final report shall be accompanied by the resource teacher time sheets.
(2) If a teacher intern's performance is judged by the committee to be unsatisfactory, the teacher intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon employment within the period of validity of the statement of eligibility for internship. If the teacher intern does not successfully complete the internship during the period of validity of the statement of eligibility, the teacher intern shall reapply for admis-
sion to the remaining one (1) year of internship by meeting the
requirements in effect at the time of reapplication for certification.
(3) If the teacher intern is unable to complete the internship
within one (1) school year in accordance with the requirements of
Section 5 of this administrative regulation, an interim report shall
be submitted to the EPSB within ten (10) days of the date the in-
ternship ceases. Under extraordinary circumstances and with the
approval of the EPSB staff, the teacher intern may continue the
internship [with employment for a semester] during a subsequent
school year if employed in a public or nonpublic accredited school
notwithstanding the provisions of Section 4 of this administrative
regulation.

Section 7. Payments to Committee Members. (1) Within the
provisions of the budgetary act, the Education Professional Stan-
dards Board shall contract with the local school district, or make
other appropriate arrangements, for:
(a) The direct service of a resource teacher to each teacher
intern;
(b) Participation in classroom observations and committee
meetings; and
(c) The employment of substitute teachers to provide at least
twenty (20) clock hours of released time for the resource teacher to
observe and assist the teacher intern during normal working hours.
(2) A resource teacher shall:
(a) Not serve as a resource teacher for more than one (1)
teacher intern concurrently; and
(b) Be paid a stipend in accordance with subsection (3) of this
section.
(3)(a) Except as provided by paragraphs (b) and (c) of this
subsection, the stipend shall be:
1. $1,400 for a year of service; and
2. Disbursed in accordance with KRS 161.030(6)(f) on a bial-
nual basis corresponding to the semester in which the mentoring
occurred or on an annual basis with payment being disbursed at
the end of the one (1) year of internship. The frequency of the dis-
bursal shall be at the option of the district if resource teacher is
serving in a public school district. If the resource teacher is serving
in a nonpublic school, the frequency of the disbursement shall be
determined by the submission of the resource teacher time sheets.
(b) If the school or school district where the internship takes
place fails to submit the time sheets by the date stipulated in Sec-
 tion 6(1) of this administrative regulation, the Education Profes-
sional Standards Board staff shall refuse payment of the stipend.
(c) The stipend shall be prorated if the required number of
hours are not performed and documented in legitimate and appro-
priate pursuit of successful completion of the internship pursuant to
the requirements of Section 5(2) of this administrative regulation.

Section 8. Participation in the Kentucky Teacher Internship
[Two-(2)-Year Pilot Project] Incentives, Duties, of Mentor, With-
drawal. (1) As an alternative to participation in the one (1) year
Kentucky Teacher Internship Program, a teacher intern may elect
to participate in the one (1) year Kentucky Teacher Internship Pilot
Project authorized by KRS 161.1222.
(2) Application for the pilot project shall be made by completing
the KTIP Pilot Project Application Form or its online equivalent
found on the Education Professional Standards Board website at
www.kyepsb.net and submitting it to the Education Professional Stan-
dards Board. As a prerequisite to participation, the applicant shall:
(a) A bona fide offer of employment;
(b) Approval for pilot project participation by the district super-
intendent or designated nonpublic school head or leader;
(c) Approval for pilot project participation by the principal or
designated nonpublic school head or leader; and
(d) A resource teacher assigned in accordance with the provi-
sions of this administrative regulation and KRS 161.030 [An eligible
mentor who will be assigned to the school at which the teacher
intern will complete the internship].
(3) The Education Professional Standards Board shall select
participants based upon a representative sample, taking into con-
sideration the following criteria:
(a) Geographic location of the internship;
(b) The teacher training institution from which the applicant
graduated;
(c) The grade level to be taught by the applicant;
(d) The content area to be taught by the applicant; and
(e) The route by which the applicant sought certification, tradi-
tional or alternative.
(4) Incentives for [two-(2)-year] pilot project participants shall
include the following:
(a) A stipend of $1,000 paid to the teacher intern by the Edu-
cation Professional Standards Board. The stipend shall be paid
upon successful completion of the first year of the two (2) year pilot
project.
(b) [Opportunities for the intern to observe experienced
teachers.]
(c) An experienced resource teacher to serve as a mentor
during the first year of the internship.
(d) Online training modules for creating the Teacher Work
Sample [streamlined portfolio].
(e) The development and use of the Teacher Work Sample in
lieu of the traditional internship portfolio.
(5) An individual serving as a resource teacher to a pilot project
participant shall be paid in accordance with the provisions of Sec-
tion 7 of this administrative regulation.

6. For individuals who have completed service as a pilot proj-
ect mentor under the prior version of this administrative regulation
which provided for a $1000 stipend, the mentor shall receive an
additional $400. In such cases, the EPSB shall forward the sup-
plemental $400 to the mentor after the effective date of this ad-
mnistrative regulation.

7. For individuals who have completed service as a pilot proj-
ect mentor under the prior version of this administrative regulation
which provided for a $1000 stipend, the mentor shall receive an
additional $800 if, at the time of appointment as a mentor to a pilot
project intern, the teacher had attained certification by National
Board for Professional Teaching Standards. In such cases, the
EPSB shall forward the supplemental $800 to the mentor after the
effective date of this administrative regulation.

8. (a) Free livetext software;
(b) A one (1)-year delay in the Kentucky Teacher Internship
Program evaluation;
(c) A stipend of $1000 paid to the mentor by the Education
Professional Standards Board upon completion of the first year
mentoring duties. If the mentor fails to serve for the entire first-year,
the stipend shall be prorated accordingly and the mentor shall be
entitled to a reduced payment based upon the percentage of
the internship served.
(d) The mentor shall support and assist the teacher intern
during the first year of the pilot project.

9. (b) Prior to serving as a member of the beginning teaching
committee, the pilot project, the principal, resource
teacher, and teacher educator each [mentor] shall have completed
the Kentucky Teacher Internship Program training and the Teacher
Work Sample Committee training.

(b) - The mentor shall serve as a mentor to one (1) teacher
intern per school year. This provision shall not preclude a teacher
from serving as a mentor to a pilot project participant while serving
as resource teacher to a teacher intern enrolled in the Kentucky
Teacher Internship Program.
(c) - The mentor shall serve as a mentor at the school at which
the teacher intern is employed. If a qualified mentor is not available
at the school at which the teacher intern is employed, the district
may require a waiver-in-writing providing detailed information as to
the nonavailability of a mentor at the same school and a written
justification as to how the mentor will provide all of the required
assistance to the teacher intern.

10. The mentor in the pilot project shall be required to prepare
for and complete for the pilot project committee members three (3)
official observations with each lasting one (1) hour or one (1) class
period in duration. One (1) of the official observations shall be of a
videotaped classroom lesson prepared by the intern and lasting one (1) hour or one (1) class period in duration.

11. (f) To the extent that they do not conflict with this section, all other provisions of this administrative regulation shall apply to the internship pilot project.

12. (h) Participation in the Kentucky Teacher Internship Pilot Project shall not alter any rights ordinarily afforded to teacher interns or employing schools or school districts under the Kentucky Teacher Internship Program. The teacher intern may withdraw at any time and may enroll in the Kentucky Teacher Internship Program with approval of the superintendent or if a nonpublic school, the designated nonpublic school head or leader.

(9) A teacher intern may be removed from the pilot project by the Education Professional Standards Board for cause.

Section 9. Appeals. (1)(a) Appeals by teacher interns shall be reviewed by a committee of four (4) persons. The appeals committee shall include:
1. One (1) teacher;
2. One (1) principal;
3. One (1) teacher educator; and
4. The Executive Director of the Education Professional Standards Board, or his or her designee.
(b) The committee members shall be chosen from a pool of committee candidates appointed annually by the Education Professional Standards Board.
(c) An appeals committee member shall not take part in a decision in which the member has an interest or is biased.
(d) The teacher intern shall file the appeal within thirty (30) calendar days of the date written notice of failure of the internship is received by the teacher intern.
(e) Upon receipt of the appeal, the Education Professional Standards Board shall send a copy to the members of the beginning teacher committee. Each member may file a written response within fifteen (15) days of receipt.
(f) The appeals committee shall review the written appeal by the teacher intern, all beginning teacher committee reports, any additional documentation that accompanied the final report, and any written responses from the members of the beginning teacher committee.
(g) The appeals committee shall base its recommendation upon the following requirements:
1. Evidence of the teacher intern's ability to meet the requirements of the new teacher standards;
2. Appropriate documentation of at least twenty (20) hours in the instructional setting and fifty (50) hours outside normal working hours spent by the resource teacher in assisting the teacher intern;
3. Assignment of beginning teacher committee members in accordance with legal requirements;
4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and
5. Agreement between teacher intern performance records, professional growth plans, beginning teacher committee meeting reports, and the final decision of the committee.

(4) The appeals committee shall make a recommendation to the Education Professional Standards Board on the appeal within sixty (60) days following the receipt of the appeal, unless good cause exists for additional time. The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. The Education Professional Standards Board may consider the appeals committee recommendation and the records reviewed by the appeals committee in issuing its decision.

(5) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the teacher intern.

(6) If the decision of the beginning teacher committee is upheld, the Education Professional Standards Board shall issue another Statement of Eligibility for Internship, unless:
(a) The teacher intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program; or
(b) The period of validity of the statement of eligibility has expired.

(7) If, during the appeal process, it becomes evident that the beginning teacher committee has committed some procedural violation during the internships which makes it impossible to determine if the teacher intern has in fact been unsuccessful, the Education Professional Standards Board may nullify the internship and allow the teacher intern to repeat the internship without penalty.

(8) If the teacher intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed, in writing, with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board's decision is received by the teacher intern.

(9) In notifying the teacher intern of the board's decision, the Education Professional Standards Board shall send the decision of the board to the last known address of the teacher intern. If the teacher intern fails to notify the Education Professional Standards Board of an updated or correct address, or refuses to claim the certified mail when presented, the request for a hearing shall be filed in writing with the Executive Director of the Education Professional Standards Board within (20) calendar days of the date the board's decision is mailed to the teacher intern by certified mail.

Section 10. A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

Section 11. An intern serving the internship in Interdisciplinary Early Childhood Education (IECE) must successfully demonstrate the new teacher standards as adapted to the IECE standards and shall utilize the IECE Observation Instrument incorporated by reference.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) "Statement of Eligibility/Confirmation of Employment form, revised November 2004 [reviewed June 2003];
(c) "KTIP Pilot Project Application Form," June 2003 edition; and

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [Division of Testing--Research--Internships], Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held May 23, 2005, at 1 p.m. at the Education Professional Standards Board, Conference Room A, 100 Airport Road, 3rd Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 5 work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2005. 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. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brenda Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the Kentucky Teacher Internship Program (KTIP) and establishes the requirements and incentives for the Kentucky Teacher Internship Program Pilot Project. The pilot project resulted from an $11.4 million Federal Teacher Quality Enhancement Grant awarded to Kentucky for the purpose of researching the value of teacher internships.

(b) The necessity of this administrative regulation: KRS 161.1222 requires that the Education Professional Standards Board promulgate administrative regulations establishing the requirements and incentives for participation in the pilot project. KRS 161.030 establishes the requirement that all beginning teachers and out-of-state teachers with less than 2 years of successful teaching experience successfully complete the internship in order to obtain a professional certificate. The regulation governs the requirements, duties of participants, timelines and assessment of the internship program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides all specifications of the internship program required by the authorizing statute.

(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 statute by complying with the requirements of the authorizing statutes, KRS 161.1222, and 161.030.

(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 incorporates by reference on-line versions of the Confirmation of Employment, Resource Teacher Time Sheets, and Record of the Teacher Internship Year and where appropriate changes the verbiage to those identified documents, incorporates the updated Kentucky Teacher Internship Program handbook, "Guiding and Assessing Teacher Effectiveness," March 2005, incorporates observation instruments and reporting materials utilizing the Interdisciplinary Early Childhood Education (IECE) standards, provides for a retroactive additional payment to individuals who served as a mentor under the previous version of this administrative regulation, and offers an increased incentive for National Board Certified Teachers to serve as resource teachers for the KTIP Pilot Project.

(b) The necessity of the amendment to this administrative regulation: The amendment will assist districts in their understanding of the procedures in completing the necessary documents required for the on-line versions of KTIP. In addition for those interns completing their internships in the area of IECE, the modified version of the observation form will better facilitate the observation and assessment of these interns. The amendment allows for incentives to encourage National Board Teachers to serve as resource teachers in the KTIP Pilot Project.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will make regular KTIP more efficient by clarifying language within the regulation, providing definitions and making terms consistent throughout the regulation. The amendment will encourage more teachers and National Board Teachers to serve as resource teacher in the pilot program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by providing the information that the authorizing statutes require to be promulgated in administrative regulations. Moreover, amendments to the statute provide a better organized regulation that is easier to understand.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Several hundred applicants seeking initial certification in Kentucky will be affected by this regulation. Approximately 176 school districts and dozens of private schools that participate in the Kentucky Teacher Internship Program will be affected by this regulation. Additionally, individuals who serve on the internship committees will 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. The school districts and internship committee members will be positively affected by the incorporation of the usage of the online documents into the regulation which will aid their understanding of the process. Interns for IECE will be positively affected by the inclusion of modified version of the observation and assessment forms.

(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.

(b) On a continuing basis: No additional agency funds allocated or necessary for continuing implementation of regulation. There is no additional cost to educators or school districts.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: For the pilot project the Title II Federal Teacher Quality Enhancement Grant is the source of funding. General Funds are the source of funding for the regular Kentucky Teacher Internship Program.

(6) 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 necessary for implementation.

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

(8) TIERING: Is tiering applied? No, all interns will serve a 1 year internship.

TEACHERS' RETIREMENT SYSTEM
(Amendment)

102 KAR 1:175. Investment policies.

RELATES TO: KRS 161.430

STATUTORY AUTHORITY KRS 161.310, 161.430

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.430 provides that the board of trustees shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investment and money of the Teachers' Retirement System. This administrative regulation establishes investment policies and procedures to carry out these responsibilities.

Section 1. (1) The board of trustees shall appoint an investment committee in accordance with the provisions of KRS 161.430(1). The trustees shall be named at the beginning of each fiscal year. The executive secretary shall act on behalf of the investment committee in administering the investment policies and procedures established in this administrative regulation. To ensure a timely market transaction, the executive secretary and the deputy executive secretary for investments may make a purchase or sale of an investment instrument without prior board approval if the action conforms to the provisions established in this administrative regulation.

(2) The board shall be provided a quarterly report reflecting a complete record of each investment transaction that occurred during that quarter.

(3) The following limitations shall apply to a staff employee who is delegated a transaction responsibility:

(a) The investment committee shall be provided a complete record of each investment transaction or holding on a regular basis.

(b) The staff shall maintain a file of investment directives that indicates the committee's separate review of each specific long-term investment.

(c) An "authorization for investment" shall be approved by the
executive secretary or the deputy executive secretary for investments.

Section 2. Funds of the Teachers' Retirement System shall be invested within a class or category of investment instruments in accordance with the limitations on an asset class established in subsection (4) of this section.

(1) The asset allocation parameters shall be structured to:
   (a) Maximize return;
   (b) Provide a prudent diversification of assets; and
   (c) Preserve the capital of the Teachers' Retirement System.

(2) The board shall:
   (a) Assume a secure investment that provides long-term growth to the fund; and
   (b) Not arbitrarily compromise security to enhance the prospects of a return.

(3) The investment committee and the board shall be mindful of the fund's liquidity and its capability of meeting a short- or long-term obligation.

(4) The following limitations shall apply to the asset classes in which funds are invested:
   (a) There shall not be a limit on the amount of investments owned by the system that are guaranteed by the United States government.
   (b) The amount invested in corporate debt obligations shall not exceed more than thirty-five (35) percent of the assets of the system at book value.
   (c) The amount invested in common stocks or preferred stock shall not exceed more than sixty (60) percent of the assets of the system at book values. The amount invested in a stock portfolio designed to replicate a general, United States stock index shall not exceed more than twenty-five (25) percent of the assets of the system at book value.
   (d) The amount invested in real estate shall not exceed more than ten (10) percent of the assets of the system at book value. Real estate shall include real estate equity, a real estate lease agreement, a mortgage on real estate that is not guaranteed by the United States government, and a share in a real estate investment trust.
   (e) The amount invested in venture capital investments shall not exceed more than one (1) percent of the assets of the system at book value. At least seventy-five (75) percent of the venture capital investments shall be in state.
   (f) The amount invested in an additional category or categories of investments shall not exceed more than ten (10) percent of the assets of the system at book value. The board shall approve by resolution an additional category or categories of investments.

Section 3. (1) The parameters that govern asset allocation shall reflect the overriding concerns by the board of trustees to:
   (a) Preserve the capital of the fund;
   (b) Provide opportunities for the fund to realize a rate of growth that will surpass the rate of inflation; and
   (c) Meet the long-term financial obligations of the Teachers' Retirement System.

(2) An investment shall:
   (a) Be identified as a fixed income or equity holding; and
   (b) Comply with the guidelines for an investment established in subsections (3) and (4) of this section.

(3) The specific guidelines associated with a fixed income investment shall be as follows:
   (a) A fixed income investment shall:
      1. Be a direct obligation of:
         a. The United States government, a United States government agency, state government, or an entity that is organized under the laws of the United States, including a United States corporation that was established in the United States and has a substantial portion of the company owned by a foreign interest; or
         b. The Dominion of Canada, if the total of Canadian obligations does not exceed five (5) percent of the book value of the entire portfolio; and
      2. Not be a foreign debt unless the debt is approved by the board of trustees as an additional category of investments.
   (b) A fixed income investment shall be rated at the time of purchase within the four (4) three (3) highest credit classifications identified by one (1) of the major rating services. A private placement debt investment shall be subject to the same credit qualifications as each fixed income investment. Notwithstanding the foregoing, the fixed income investment portfolio as a whole shall maintain an average rating equal to at least the second highest credit classification.
   (c) An investment purchase shall not equal more than twenty-five (25) percent of a single publicly traded debt issue, unless the investment has a book value of less than twenty-five (25) percent of the assets of the system at book value.
   (d) Unless the issuer is the United States government or one (1) of its agencies, the amount invested in the securities of a single issuer shall not exceed more than five (5) percent of the assets of the system at book value.
   (e) An investment in a mortgage shall be:
      a. A first mortgage on property located within the United States; or
      b. A mortgage guaranteed by the United States government.
   2. A return on a mortgage investment shall reflect its marketability and cash flow.
   (f) The management of a fixed income investment shall be regarded as active.
      1. If a security can be sold to the long-term benefit of the system, it shall be sold.
      2. A bond may be swapped to take advantage of a yield spread between various qualities of bonds or the yield curve that differentiates bond returns by maturity.
      3. A security may be sold at a loss if an alternative investment will add to the value of the fund and recoup the loss in a reasonable period of time.
   4. The board of trustees and the investment committee shall make each investment for the general enrichment and security of the fund.

(4) The specific guidelines associated with an equity investment shall be as follows:
   (a) The system shall not buy bullion, a stamp, rare coin, or other collectible.
   (b) The system shall not:
      1. Invest in a foreign currency without specific approval from the board of trustees. If the board of trustees approves the purchase of foreign equity, the system may settle a security transaction in a foreign city; and
      2. Domicile a security or maintain a cash account in a foreign country.
   (c) A stock investment shall be with a corporation that is created under the laws of the United States or that is a component of a major United States stock exchange index unless approved by the board as an additional category of investments. The system may acquire equity in a United States corporation that operates in a foreign country.
   (d) Due to the greater risk associated with stock ownership, a stock investment shall be expected to yield a higher return on investment than the highest quality bond.
   (e) The system's position in a single stock shall not exceed two (2) percent of the system's assets at book value. The system's position in a single stock shall not exceed five (5) percent of the outstanding stock for that company unless the investment is part of a venture capital program approved by the board of trustees or the investment committee.
   (f) A real estate investment shall be judged on its total return potential. The system shall not acquire undeveloped land unless development plans are imminent.
   (g) A real estate purchase that is conducted on a triple net lease basis shall involve a company that at the time of the initial agreement generates one (1) of the three (3) highest credit ratings with a national credit rating service.
   (h) 1. Except as provided in subparagraph 2 of this paragraph, the board of trustees and the investment committee shall avoid the incurrence of a loss.
      2. The system may sell equity at a price below its cost to the system if an alternative investment would provide a higher return and permit the loss to be recouped within a reasonable period of time.
time.

Section 4. The investment committee shall evaluate the performance and services of an investment counselor. The committee through the board of trustees shall employ an investment counselor annually. The committee shall review the performance of a counselor recommendation and compare the performance to anticipated performance, efforts of other counselors, and appropriate market indices. The system may utilize the services of a consultant to evaluate a counselor or ascertain the combined effect of several investment counselors and the overall risk levels associated with the investment portfolio. A consultant shall evaluate the effectiveness of an investment manager in maintaining prescribed styles of investment. A periodic report shall be prepared to identify and document the efforts of an investment counselor. An annual report on the performance and service of each investment counselor shall be provided to the board with recommendations from the investment committee.

ARTHUR GREEN, Vice Chairperson, Acting Chair
APPROVED BY AGENCY: March 21, 2005
FILED WITH LRC: March 23, 2005 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005, at 9 a.m., ET, in the Board Room of the main building of the Teacher's Retirement System of the State of Kentucky located at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by May 16, 2005, 5 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 May 31, 2005. 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: Robert B. Barnes, General Counsel, Teacher's Retirement System of the State of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the Board of Trustees' approval for the investment policies of the retirement system.
(b) The necessity of this administrative regulation: Investment policies provide guidelines for the investment of retirement system assets in a prudent and responsible manner for long-term growth.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.430(4) provides that the Board of Trustees, in order to insure timely market transactions, shall establish investment guidelines, by administrative regulation, and may then permit staff and investment counselors to execute sales and purchases without prior board approval. KRS 161.310 requires the Board of Trustees to promulgate regulations for the transaction of the business of the retirement system.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the board's approval for investment guidelines as required by KRS 161.430(4).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary:
(a) How the amendment will change this existing administrative regulation: The amendment expands the type of fixed income that KTRS may invest in to the full range of investment grade bonds, instead of being limited to only the first 3 grades. As such, KTRS could invest in the first 4 grades of bonds, all investment grade bonds, which would include BBB/Baa bonds. This amendment would also require that the overall bond portfolio maintain an average rating within the first 2 grades, or, in other words, within the AA grade or above.
(b) The necessity of the amendment to this administrative regulation: The amendment provides greater investment flexibility and the possibility of a higher rate of return on fixed income investments while still requiring investment in investment grade bonds only. This amendment also requires that KTRS maintain an overall rating in the higher graded bond category so that the investments cannot be overly weighted in the lower grades only.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 161.430(4) authorizes the board to approve investment guidelines.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide regulatory guidelines on KTRS investment policies.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will benefit all 110,000 plus KTRS members by providing greater investment options in fixed income investments, while assuring an overall bond rating average.
(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 should help increase returns in the fixed investment category, thereby adding funds and the financial health of the retirement system that the members depend upon to pay their retirement benefits.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis First Year: Same as (5)(a).
(c) Continuing cost or savings: Same as (5)(a).
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Member contributions pursuant to KRS 161.540 and employer contributions pursuant to KRS 161.550 and investment income earned on those contributions will provide the source for investing in a new investment grade class. Again, there would be no additional cost, just more alternatives to investing existing funding 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 is anticipated as a result of this amendment.
(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established either directly or indirectly.
(9) TIERING: Is tiering applied? No, tiering is not applied as this regulation merely provides investment guidelines and is not a regulation that can be tiered "to reduce disproportionate impacts on certain classes of regulated entities and to avoid regulating entities that do not contribute significantly to the problem the administrative regulation was designed to address" as contemplated by the tiering statute, KRS 13A.210(1).

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)

RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.045(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. Incorporation by Reference. (1) "Finance and Ad-
and related services, and updates the Commonwealth Office of Technology's Cellular Telephones Policy (FAP 300-01-00) to include rates by which employees shall reimburse the Commonwealth for costs incurred due to personal calls of the employee.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed to ensure that vendors are aware that they will not be notified of all contract awards, to allow the Department of Parks to procure edible food products from local producers without going through the competitive bid process, and to establish rates for reimbursement for personal cell phone usage.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all state agencies, and all individuals, firms, organizations, and political subdivisions doing business with the Commonwealth.

(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 have limited impact on agencies purchasing non-professional services. It will ensure that all vendors are aware of how to ascertain when contracts are awarded.

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

(a) Initially: $0

(b) On a continuing basis: $0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding necessary.

(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, all state agencies regulated by the Model Procurement Code are required to comply with the policies in the Finance and Administration Cabinet Manual of Policies and Procedures.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Amendment)


RELATES TO: KRS 45A.095

STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 45A.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.095(1) requires the cabinet to promulgate administrative regulations concerning noncompetitive negotiations. This administrative regulation implements the provisions of KRS 45A.095.

Section 1. Contracts may be awarded on the basis of noncompetitive negotiations only for:

(1) Telephone, electrical energy, and other public utility services;

(2) Other services provided within a defined geographic area pursuant to a franchise awarded pursuant to law by a city, county, or other political subdivision authorized to award the franchise;

(3) Purchase or lease of a telephone system to serve the internal needs of state agencies or institutions;

(4) Commodities, equipment, or services available from a sole source, as determined by the purchasing officer in writing;

(5) Instructional materials, equipment, or supplies available from a sole source and necessary to a particular instructional program, as determined by the purchasing officer in writing;
VOLUME 31, NUMBER 11 — May 1, 2005

4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kristen Webb, Legislative Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation promulgates policies for the use of noncompetitive negotiations to award procurement contracts.
(b) The necessity of this administrative regulation: KRS 45A.035 authorizes the secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.095(1) requires the cabinet to promulgate administrative regulations concerning noncompetitive negotiations. This administrative regulation implements the provisions of KRS 45A.095.
(c) How this administrative regulation conforms to the content of the authorizing statutes: In accordance with KRS 45A.095, this administrative regulation promulgates policies for when noncompetitively negotiated state procurement contracts may be sought.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation clarifies which types of contracts state agencies may award by noncompetitive negotiations.

(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 clarifies that “commercial items purchased for resale” in accordance with KRS 45A.095(1)(d) may not be modified or altered before resale. The only exception to this narrow construction is that commercial food items requiring preparation or cooking may be purchased for resale in the state parks through noncompetitive negotiation.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation provides that “commercial items purchased for resale” in accordance with KRS 45A.095(1)(d) may not be modified or altered before resale. The only exception to this narrow construction is that commercial food items requiring preparation or cooking may be purchased for resale in the state parks through noncompetitive negotiation.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment resolves an inconsistency with existing purchasing policies incorporated by reference in 200 KAR 5:021.
(d) How the amendment will assist in the effective administration of the statutes: This amendment clarifies the scope of KRS 45A.095(1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all state agencies and vendors that seek state contracts for items covered by the 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: The amendment to the administrative regulation will have a positive impact on local producers of food items (i.e., Kentucky farmers) who will be allowed to sell their products directly to state parks for preparation and resale at the parks. There will be little or no impact on any other group.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: $0
(b) On a continuing basis: $0
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

(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 or change 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? Tiering is not applied. Whether noncompetitive negotiation is permitted is determined by the type of commodity sought, not the characteristics of the state agency or...
VOLUME 31, NUMBER 11 – May 1, 2005

FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(Amendment)

200 KAR 14:011. Qualified investments.

RELATES TO: KRS 42.500(9)-(14), 42.520, 42.525
STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2),
42.525
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500,
42.520, and 42.525 provides that the State Investment Commission
shall implement the state's investment program by administrative
regulation. This administrative regulation establishes the standards
that govern the commonwealth's investment and cash manage-
ment programs.

Section 1. Definitions. (1) "Commission" means the State In-
vestment Commission.
(2) "Floating rate" means that the interest rate that:
(a) Is paid on the specific security changes periodically on a
preestablished schedule;
(b) May be tied directly to an index plus some spread or mar-
gin; and
(c) Includes hybrid adjustable rate mortgages if the first repric-
ing date is less than six (6) years from the issuance date.
(3) "Hedge" means a position in a financial instrument taken to
minimize or eliminate the risk associated with an existing instru-
ment or portfolio of instruments.
(4) "Interest rate swaps" means an agreement governed by an
International Swap Dealers Association master contract between
two (2) parties to exchange, or have the conditional right to ex-
change, specified cash flows.
(5) "Nationally-recognized rating agency" means Moody's In-
vestors Service, Standard and Poor's, or Fitch Ratings.
(6) "Office" means the Office of Financial Management.
(7) "Options" means a contract that provides the right, but not
the obligation, to buy or sell a specific amount of a security within
a predetermined time period and includes specific bonds or notes, an
exchange traded futures contract, or the cash value of an index.
(8) "Pools" means the investment pools that are managed by
the Office of Financial Management, under the guidance of the
commission.

Section 2. The commission shall:
(1) Not invest state funds in an institution or instrument that it
determines unsafe and a threat to the security of state funds;
(2) Maintain adequate liquidity to meet the cash needs of the
state;
(3) Within the limits established by this administrative regula-
tion, invest in securities that maximize yield or return to the com-
monwealth; or
(4) Not borrow money to enlarge the pool.

Section 3. Interest earned on the cash balances shall be calcu-
lated daily on an accrual basis.

Section 4. Investment Criteria. (1) The criteria to determine
the amount of funds per investment instrument shall be the:
(a) Liquidity needs of the state as aggregated;
(b) Rates available per instrument; and
(c) Safety of principal and interest.
(2) An investment instrument shall qualify if it is specified by:
(a) KRS 42.500;
(b) This administrative regulation;
(c) 200 KAR 14:081; or
(d) 200 KAR 14.091.

Section 5. Investment Securities. The commission shall invest
only in the following security types:
(1) U.S. Treasury, agency, and government sponsored entity
agency securities with a maturity of less than seven (7) years, or
an embedded out of less than three (3) years.
(2) Mortgage pass-through securities issued by U.S. govern-
ment agencies or by government sponsored entities, including,
government national mortgage association, Federal National Mon-
tgage Association, Federal Home Loan Mortgage Corporation,
Small Business Administration, and Student Loan Marketing Asso-
ciation with an average life of less than four (4) years at the time of
purchase, using Bloomberg consensus prepayment projections, if
available, or other reasonable prepayment assumptions if there is
no consensus. The commission may hold pass-throughs pur-
chased under this subsection which have an average life of less
than six (6) years, using Bloomberg consensus prepayment pro-
jections, if available, or other reasonable prepayment assumptions
if there is no consensus.
(3) Real estate mortgage investment conduit obligations, as
defined by the Internal Revenue Code, also known as collateral-
ized mortgage obligations, or CMOs, rated A or higher by a nation-
ally-recognized rating agency with an average life of less than four
(4) years at the time of purchase, using Bloomberg consensus
prepayment projections, if available, or other reasonable prepay-
ment assumptions if there is no consensus. The commission may
hold CMOs purchased under this subsection which have an aver-
aged life of less than six (6) years, using Bloomberg consensus
prepayment projections, if available, or other reasonable prepay-
ment assumptions if there is no consensus.
(4) Asset-backed securities (ABS) rated in the highest category
by a nationally-recognized rating agency with an average life of
four (4) years or less.
(5) U.S. dollar denominated corporate and Yankee securities
issued by foreign and domestic issuers rated A or higher by a na-
tionally-recognized rating agency, with a maturity not longer than
five (5) years, or an embedded out of less than three (3) years.
(6) U.S. dollar denominated sovereign debt rated A1 or higher
by a nationally-recognized rating agency, with a maturity not to
exceed five (5) years.
(7) Money market securities, including:
(a) Commercial paper;
(b) Certificates of deposit; and
(c) Eurodollars and time deposits rated in the highest short-
term rating with assets in excess of one (1) billion dollars and
bankers' acceptances rated A or higher. Maturities shall be limited
to six (6) months for bankers' acceptances and nine (9) months for
all other money market securities.
(8) Repurchase and reverse repurchase agreements collateral-
ized at 102 percent (marked to market daily) with treasuries,
agencies, and collateralized mortgage obligations that meet the
requirements established by subsection (4) of this section, with a
maximum maturity of one (1) year if executed with approved bro-
der-dealers as provided by Section 8 of this administrative regu-
lation and a maximum of three (3) years for the Kentucky Bank Re-
purchase Program participants.
(9) Municipal obligations rated A1 or higher by a nationally-
recognized rating agency, with a maturity not to exceed five (5)
years. The maturity restriction shall be waived for obligations is-
sued by the Commonwealth of Kentucky or any entity within the
Commonwealth of Kentucky.
(10) Mutual funds in which at least ninety (90) percent of the
underlying holdings of the fund are in securities in which the pools
could invest directly.
(11) Any floating rate securities which would otherwise qualify
under this section except for maturity or average life restrictions.

Section 6. Limits on Investment Securities. (1) U.S. agency
mortgage backed securities and collateralized mortgage obliga-
tions shall not exceed twenty-five (25) percent of total pool assets
in aggregate.
(2) Asset-backed securities shall not exceed twenty (20) per-
cent of total pool assets.
(3) U.S. dollar denominated corporate and Yankee securities
issued by foreign and domestic issuers shall not exceed twenty-five
(25) percent of an individual pool and $25,000,000 per issuer, in-
clusive of commercial paper, bankers' acceptances, and certifi-
cates of deposit.
(4) U.S. dollar denominated sovereign debt shall not exceed
1. International Swap Dealers’ Association Agreement prior to the implementation of a swap; and
2. Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities, prior to the implementation of an over the counter option transaction.

(a) Within 180 days of the end of each broker-dealer’s fiscal year, a broker-dealer shall submit a copy of the broker-dealer’s audited financial statements for that fiscal year.
(b) A broker-dealer who wishes to be approved by the commission as an approved broker-dealer shall submit a copy of the broker-dealer’s current audited financial statements.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Commonwealth of Kentucky, Bond Proceeds Pool, Prospectus, (12/97);
(b) "Commonwealth of Kentucky, Short-term Pool, Prospectus, (12/97);
(c) "Commonwealth of Kentucky, Intermediate-term Pool, Prospectus, (12/97);
(d) "Commonwealth of Kentucky, Long-term Pool, Prospectus, (12/97);
(e) "Public Securities Association Master Repurchase Agreement (12/97);
(f) "Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of New York (12/97);
(g) "Custodial Undertaking in Connection with Master Repurchase Agreement, Chase Manhattan (12/97);
(h) "International Swap Dealers’ Association Agreement (12/97); and
(i) "Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities (12/97)."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at State Investment Commission, Suite 251, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 14, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on May 24, 2005, at 10 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by, May 17, 2005, 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 May 31, 2005. 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: Kristan Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 383, Capital Annex, Frankfort, Kentucky 40601, phone (502) 584-4240, fax (502) 584-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen Webb
(1) Provide a brief summary of:
(a) What this administrative regulation does: This amendment to administrative regulation adds embedded puts of less than 3 years to the list of permissible investments for the State Investment Commission.
(b) The necessity of this administrative regulation: KRS 42.500, 42.520, and 42.525 provide that the State Investment Commission shall implement the state’s investment program by administrative regulation.
VOLUME 31, NUMBER 11 – May 1, 2005

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets standards for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in interpretation of the securities allowed to be purchased by the commission and limitations thereon.
(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 adds embedded puts of less than 3 years to the list of permissible investments for the State Investment Commission.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to permit the commonwealth to avail itself of all investments meeting the commonwealth’s investment criteria.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment modifies the standards for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments.
(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in interpretation of the securities allowed to be purchased by the commission and limitations thereon.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None of the above will 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: No impact is expected from the implementation of this administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for implementation 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 additional funding is necessary for implementation of this regulation.
(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? The commonwealth runs 4 different funds. Different agencies have different needs for their money and we accommodate those needs by offering the 4 different funds. Our Short-term Pool is used for accounts that will expend their money very quickly. The Long-term Pool is only used by the Transportation Cabinet and the Budget Reserve Trust Fund. The expenditures in these accounts are known well in advance. The Bond Proceeds Pool is used for bond proceeds only and allows arbitrage calculations to be more easily calculated. All other agencies go into the Intermediate Pool, which provides less liquidity than the Short-term Pool but provides a great yield.

FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(Amendment)

200 KAR 14:081. Repurchase agreement.

RELATES TO: KRS 41.610, 42.500(9)-14(14), 42.520, 42.525
STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.525
requires the State Investment Commission to prescribe standards for
the operation of the state's investment program. This adminis-
trative regulation establishes the general standards which shall
apply to the employment of repurchase agreements as investment
vehicles with eligible financial institutions.

Section 1. Definitions. (1) "Commission" means the State In-
vestment Commission.
(2) "Eligible financial institution" means:
(a) A commercial bank, or savings and loan association:
1. Chartered to do business in Kentucky by the Commonwealth
of Kentucky, or by an agency of the United States government;
2. Maintains an office in Kentucky; or
(b) A broker-dealer approved pursuant to the provisions of
Section 8 of 200 KAR 14:011.
(3) "Office" means the Office of Financial Management [and
Economic Analysis].
(4) "Repurchase agreement" or "reverse repurchase agree-
ment" means an actual, conditional purchase or sale of securities
of the United States Treasury, an agency, instrumentality, or corpo-
ation of the United States, or another security authorized for in-
vestment pursuant to KRS 42.500(9), with an agreement to resell
or repurchase the securities to their original owner on a specific
date in the future.

Section 2. Minimum Interest Rates. Except as provided by
KRS 41.610, the commission shall not invest public funds in a
repurchase agreement with a yield less than could be received on
a directly purchased United States Treasury security of comparable
maturity.

Section 3. Reporting Requirements for Eligible Investment
Institutions. The commission shall inform eligible financial institu-
tions of the reporting requirements for the investment of state funds
in eligible financial institutions established by this section.
(1) An eligible financial institution shall:
(a) Submit a copy of its quarterly financial reports as furnished
to Department of Financial institutions, including accompanying
schedules, to the commission within thirty (30) days from the end
each quarter; and
(b) Complete and sign the "Public Securities Association Mas-
ter Repurchase Agreement".
(2) An approved broker-dealer shall:
(a) Submit a copy of its annual audited financial statements
and copies of quarterly financial statements, as published, to the
commission; and
(b) Complete and sign the "Public Securities Association Mas-
ter Repurchase Agreement".

Section 4. Eligible Securities. Investment securities authorized
for investment pursuant to KRS 42.500(9) shall be considered
eligible securities for repurchase agreements.

Section 5. Sufficiency of Securities Purchased. (1) The securi-
ties purchased shall have a market value, including accrued inter-
est, of not less than 102 percent of the face value of the repur-
chase agreement.
(2) The state's custodian [general depository] banking contract
shall require the general depository to review the sufficiency of
collateral on all repurchase agreements, except those subject to a
triparty agreement. The review shall occur at least every seven (7)
calendar days with periodic reviews made by the office.
(3) The commission shall demand additional securities to be
delivered immediately, if market conditions cause the value of the
securities purchased to drop below 102 percent of the face value of
the repurchase agreement.

Section 6. Status of Parties. (1) The commission and the eli-
gable financial institutions authorized to enter into repurchase agree-
ments:
(a) Shall be considered principals in repurchase agreements; and
(b) Shall not be considered agents for third parties.
(2) Contractual obligations shall apply to and be binding on the
commission and the specific eligible financial institution with which
the repurchase agreement is initially negotiated and settled.
Section 7. Default. (1)(a) If an eligible financial institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall set off claims and liquidate property held in respect to the repurchase agreement against obligations owing to the eligible financial institution under other repurchase agreements.

(b) Payments, deliveries, and other transfers made under a repurchase agreement shall be deemed to have been made in consideration of payments, deliveries, and other transfers made under any other repurchase agreement by the eligible financial institution.

(c) The obligation to make payments, deliveries and other transfers under a repurchase agreement may be applied against the obligation to make payments, deliveries and other transfers under any other repurchase agreements of the eligible financial institution and netted.

(2)(a) From the proceeds of liquidated property, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation.

(b) Remaining cash balances shall be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section 8. Kentucky Bank Repurchase Program. (1) Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky before being placed shall meet the following criteria (shall be placed pursuant to the following):

(a) A loan to deposit ratio equal to or greater than seventy (70) percent.

(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent.

(c) A capital to assets ratio equal to or greater than seven (7) percent; and

(d) A return on assets ratio greater than zero.

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky shall be limited to not more than $5,000,000 per institution.

(3) The office shall review the financial ratios listed quarterly to determine eligibility of institutions. Existing repurchase agreements with institutions which fail to meet the minimum criteria for two (2) consecutive quarters shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:

(a) Availability of funds;

(b) Demand for funds by the institutions; and

(c) Highest loan to deposit ratio of eligible institutions.

(4) A repurchase agreement with a commercial bank or savings and loan shall not be an amount in excess of its capital structure or ten (10) percent of the institution's deposits, whichever is less.

(b) The commission shall not enter into a Kentucky Bank Repurchase Program repurchase agreement with a commercial bank or savings and loan association that will cause that institution to exceed in aggregate a total of $25,000,000 in repurchase agreements.

(5) Yield charged and collateral requirements for commercial banks and savings and loans.

(a) A commercial bank or savings and loan submitting U.S. Treasuries and agencies excluding mortgage backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as quoted by Bloomberg Financial Markets with 10 percent collateral.

(b) A commercial bank or savings and loan submitting mortgage-backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as posted on Bloomberg Financial Markets, plus fifty (50) basis points with 105 percent collateral.

(6) Payment for and safekeeping of purchases.

(a) Each transaction shall be conducted on a payment-versus-delivery basis.

(b) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(c) Securities purchased from commercial banks or savings and loan associations in a repurchase agreement shall be received, verified, and safe-kept by the state's custodial [general depository] bank or its agent.

R.B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 14, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on May 24, 2005, at 10 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by May 17, 2005, 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 May 31, 2005. 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, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 383, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kristen Webb

1. Provide a brief summary of:

(a) What this administrative regulation does: This amendment to administrative regulation changes the reference in Section 5(2) from "state's general depository banking contract" to "state's custodial banking contract".

(b) The necessity of this administrative regulation: KRS 42.500(10), 42.520(2), and 42.525 provide that the State Investment Commission shall implement the state's investment program by administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets standards for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in interpretation of the securities allowed to be purchased by the commission and limitations thereon.

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 to administrative regulation changes the reference in Section 5(2) from "state's general depository banking contract" to "state's custodial banking contract".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary as the commonwealth has split its banking contract into two separate contracts. Prior to this split, all banking needs were awarded to 1 bank. It was determined that it would be more efficient to create 2 contracts for banking services. 1 for depository related needs and the other for custody of the state's assets. The bank now required to monitor collateral of the commonwealth is the bank that has the custodial contract thus the need to change the language.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment modifies the standards for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies who is responsible for monitoring that proper collateral is being given to the common-
wealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: None of the above will 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: No impact is expected from the implementation of this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost.
(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for implementation 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 additional funding is necessary for implementation of this regulation.

(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 applied to the extent that only certain banks have the expertise to be a custodial bank to the Commonwealth. Other institutions have the capability to be the depository bank for the commonwealth thus the splitting of the contract into two.

GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(Amendment)

201 KAR 18:030. In-training certificates.

RELATES TO: KRS 322.010, 322.040, 322.120
STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.120, 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.010 defines engineer-in-training and land surveyor in training. KRS 322.290(4) provides the board with the authority to promulgate administrative regulations necessary to perform its duties. This administrative regulation outlines the requirements under the certification program for in-training engineers and land surveyors under which the board has provided for early testing of basic sciences and fundamentals of engineering and land surveying.

Section 1. In-training Certificates, to provide an early test of abilities and knowledge of the basic sciences and fundamentals of engineering and land surveying the board has established a plan for certification of engineers-in-training and land surveyors-in-training.

Section 2. Examinations are offered in the fundamentals of engineering (FE) and fundamentals of land surveying (FLS) provided by the National Council of Examiners for Engineers and Land Surveyors.

Section 3. Final year as referred to in KRS 322.040 Section 1(1)(a)(3)(b), Section 2(1)(c)(1) and (2) (b) and Section 2(1)(c)(3) (b) means completion of at least 105 semester credit hours in the program. (4) An individual is eligible to sit for the FE examination upon completion of 105 hours in a program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board.

(2) An individual is eligible for sit for the FLS examination upon proof of one (1) of the following:
(a) Graduation from a board-approved program in land surveying from a college or university.
(b) Graduation from a one-(4)-year program-other-than-land surveying accredited by one (1) of the Commissions of the Accreditation Board for Engineering and Technology followed by two (2) years of land surveying experience under the direct supervision of a professional land surveyor, or
(d) Graduation from a two (2)-year board-approved program in land surveying followed by two (2) years land surveying experience under the direct supervision of a professional land surveyor.

Section 4, [3] A qualified applicant who passes the examination shall be issued a certificate of recognition as engineer-in-training or land surveyor-in-training. The certificate shall be valid indefinitely with no renewal fees.

Section 5, [4] The executive director is authorized to approve applications for the FE and FLS examinations.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: March 29, 2005
FILED WITH LRC: March 30, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005 at 9 a.m. at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 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 May 31, 2005. 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: Donna G. Dutton, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (800) 573-2680, fax (502) 573-6887.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Donna G. Dutton
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation will amend 201 KAR 18:030. This amendment is necessary to be in conformance with HB 73 which amends KRS 322.040 and requires an educational requirement in order to be licensed as a surveyor.
(b) The necessity of this administrative regulation: KRS 322.010 defines engineer-in-training and land surveyor in training. KRS 322.290(4) provides the board with the authority to promulgate administrative regulations necessary to perform its duties. This administrative regulation outlines the requirements under the certification program for in-training engineers and land surveyors under which the board has provided for early testing of basic sciences and fundamentals of engineering and land surveying.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290 provides that the board shall promulgate administrative regulations that are consistent with the laws of the state and reasonably necessary for the proper performance of its duties. This amendment is necessary to be in conformance with HB 73 which amends KRS 322.040 and requires an educational requirement in order to be licensed as a surveyor.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will be consistent with HB 73.
(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 is necessary to be in conformance with HB 73 which amends KRS 322.040 and requires an educational requirement in order to be licensed as a surveyor.

(b) The necessity of the amendment to this administrative regulation: Same as above.

(c) How the amendment conforms to the content of the authorizing statute: Same as above.

(d) How the amendment will assist in the effective administration of the statutes: Same as above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons who apply for a land surveyor’s license in Kentucky 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: Under the current law, there are several routes to become licensed including 1 with a high school diploma. Under the new law, the routes to become licensed are reduced and each require a 4 year degree along with experience.

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

(a) Initially: No additional cost. It will be part of the current licensing program.

(b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board restricted funds.

(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.

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

(9) TIERING: Is tiering applied? No, all applicants for land surveying licenses will be treated the same.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(Amendment)

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.591
STATUTORY AUTHORITY: KRS 17.554(1), 17.564
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(1) authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish standards for mental health professionals providing court-ordered comprehensive sex offender presence evaluations and treatment of sex offenders. This administrative regulation establishes approval requirements to assure the quality of court-ordered comprehensive sex offender presence evaluations and treatment of sex offenders.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.550(3).

(2) "Board" is defined by KRS 17.550(1).

(3) "Comprehensive sex offender presence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) factors listed in KRS 17.554(2).

(4) "Corrective action plan" means a plan submitted by the approved provider and accepted or imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.

(5) "Sex crime" is defined by KRS 17.500(4).

(6) "Sex offender" is defined by KRS 17.550(2).

(7) "Victim" is defined by KRS 421.500(1).

Section 2. Qualifications of Approved Providers. To qualify as an approved provider, an applicant shall, in addition to meeting the requirements of KRS 17.550(3):

(1) Have completed forty (40) hours of specialty training provided or approved by the Board under Section 8 of this administrative regulation including the following:

(a) Characteristics and offense patterns of sex offenders;

(b) Treatment modalities used with sex offenders;

(c) Legal and ethical issues in the risk assessment of sex offenders;

(d) Victim's issues, not to exceed two (2) hours of credit against the total requirement;

(e) Issues related to the assessment of juvenile and female sex offenders; and

(f) Use of the appropriate actuarial or evaluation instruments;

(2) Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and

(3) Have a minimum of documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:

(a) Sixty (60) hours documented experience conducting sex offender evaluations or complete a practicum as described in Section 6 of this administrative regulation; and

(b) 190 hours documented clinical contact conducting sex offender treatment or complete a practicum as described in Section 6 of this administrative regulation.

Section 3. Duties. (1) If an approved provider performs a comprehensive sex offender presence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.

(2) If an approved provider has provided treatment for a sex offender, he shall not perform a comprehensive sex offender presence evaluation for personal financial gain for the sex offender for six (6) months following the treatment.

(3) An approved provider shall:

(a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;

(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and

(c) Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes (after becoming) an approved provider. The board may grant an extension of six (6) in which to complete hours of continuing education upon request. An approved provider may submit a plan for making up any uncompleted hours for a calendar year within the next calendar year, provided that such a plan has not been requested or approved by the board for the approved provider for either of the two (2) preceding calendar years. A request for extension to make up hours shall be made to the board in writing and postmarked on or before December 31 of the calendar year for which the hours apply. The request shall include the number of hours that need to be completed for the calendar year, proof of any hours that were completed, and a plan detailing how the missing hours and the next year's eight (8) hours will be obtained.

Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if he meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.

(2) An individual may apply to the board for approval status as an approved provider by submitting:

(a) A written request for approval, which shall include the following:

1. Full name;
2. Business address;
3. Home address;
4. Daytime telephone number;
5. Fax number, if available; and
6. Social Security number;
(b) Documentary evidence of his qualifications; and
(c) Evidence that he has remedied the cause for the denial or revocation, if approval is denied or revoked under Section 5 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:
(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;
(b) The board is unable to verify the authenticity of the documentation of qualifications; or
(c) Any of the information required in subsection (2) of this section is not submitted.

(4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.

(5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than ninety (90) days after receiving a complete application for approval.

(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:
(a) He submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 8 of this administrative regulation; and
(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.

(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend or revoke approval if an applicant or an approved provider has:
(a) Been convicted of or pled guilty to a felony criminal offense or a misdemeanor offense against a person;
(b) Had a domestic violence protective order issued against him within the previous five (5) years;
(c) Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;
(d) Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status;
(e) An alcohol or drug abuse problem as defined in KRS 222.005(12);
(f) Falsified any information or documentation, or has concealed a material fact, in his request for approval;
(g) Failed to implement a corrective action plan imposed by the board in accordance with Section 7 of this administrative regulation;
(h) Three (3) or more evaluations which the board finds are below standard upon review;
(i) Failed to comply with the comprehensive sex offender presentation evaluation procedure established in 501 KAR 6:200;
(j) Shown an inability to adequately conduct an evaluation with reasonable skill;
(k) Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent; or
(l) Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent.

(2) The board may deny, suspend or revoke approval if an applicant or an approved provider has:
(a) Been convicted of or pled guilty to any misdemeanor criminal offense that is not against a person;
(b) Had a sanction applied against his mental health professional licensure or certification at any time in the past two (2) years;
(c) Failed to comply with the duties set forth in Section 3 of this administrative regulation;
(d) Less than three (3) evaluations that the board finds are below standard upon review; or
(e) Failed to comply with the treatment requirements established in 501 KAR 6:220;
(f) Failed to comply with the evaluation procedure established in 501 KAR 6:200; or
(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2(1)(c) of this administrative regulation.

(3) If the board intends to deny, suspend or revoke approval, it shall:
(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider, and
(b) Notify the applicant or approved provider of his hearing rights, in accordance with KRS 17.560.

(4) An approved provider who has had his approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date his approval was revoked unless his revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.

Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:
(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
   1. 500 hours conducting sex offender evaluations; and
   2. 1500 hours of clinical contact in sex offender treatment;
(b) Be an approved provider in good standing with the board;
(c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;
(d) Directly observe the practicum participant’s clinical practice in person or through video or audio tape;
(e) Examine and approve all comprehensive sex offender presentation evaluations performed by the practicum participant; and
(f) Give written notice to the board if he determines that the practicum participant’s performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 501 KAR 6:220.

(2) To complete a practicum required by this administrative regulation, the participant shall:
(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;
(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;
(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;
(d) Participate in the practicum for a minimum of six (6) months; and
(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.

(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in subsections (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.

Section 7. Monitoring. (1) The board may:
(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation; and
(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider's scope of practice, to the appropriate Kentucky licensing or certification board.

(2) The board may investigate and evaluate an approved provider's adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 8:220, on its own initiative.

(3) Board staff may monitor by the following activities:
(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;
(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;
(c) Direct observation of the evaluation or treatment of a sex offender; or
(d) Interviewing judicial, correctional, law enforcement officials or other agency personnel that interact with an approved provider in reference to comprehensive sex offender presentence evaluations or treatment of sex offenders.
(4) If an approved provider fails to comply with provisions of this administrative regulation, the board shall notify him in writing of its determination and may:
(a) Require the approved provider to submit a corrective action plan for approval by the board;
(b) Impose a corrective action plan; or
(c) Revoke approval in accordance with Section 5 of this administrative regulation.
(5) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within ninety (90) days.

Section 8. Approval of Specialty Training and Continuing Education.
(1) Specialty training.
(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board;
(b) An approved provider seeking approval of a specialty training course shall submit to the board the following:
   1. A certificate of attendance which shall include the number of hours of training received; and
   2. An agenda from the training seminar that describes topics and length of time spent on each topic.
(c) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.
(2) Continuing education.
(a) Continuing education, as required in Section 3(2)(c) of this administrative regulation, shall be approved or provided by the board;
(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:
   1. A certificate of attendance that shall include the number of hours of education received.
   2. An agenda from the seminar, which describes topics and length of time spent on each topic.
(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under subsection (2)(b) of this section.

KATHI PETERSON, Psy.D., Chairperson
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 5 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 May 31, 2005. 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: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides the requirements for becoming an approved provider for treating and evaluating sex offenders through the Sex Offender Risk Assessment Advisory Board.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 17.550, et seq.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation states the approval process that the board is required to determine.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing direction to mental health professionals who desire to be approved providers who are authorized to provide court-ordered treatment for sex offenders.
(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 allows the board to approve six-month extensions for approved providers to obtain required continuing education hours.
(b) The necessity of the amendment to this administrative regulation: To provide more efficient administration of the regulations regarding approved providers and to avoid unnecessary revocation of approval of providers.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation amends the approval process that the board is required to determine.
(d) How the amendment will assist in the effective administration of the statutes: To provide more efficient administration of the regulations regarding approved providers and to avoid unnecessary revocation of approval of providers.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 61 approved providers and the sex offenders that they treat or evaluate.
(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 approved providers may be allowed additional time to complete required hours of continuing education.
(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 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: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(Amendment)

501 KAR 6:220. Treatment for sex offenders.

RELATES TO: KRS 17.550-17.991
STATUTORY AUTHORITY: KRS 17.564
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.564

authorizes the Sex Offender Risk Assessment Advisory Board to
promulgate administrative regulations to establish the minimum requirements for treatment of sex offenders. KRS 17.554(2) requires the board to develop a risk assessment procedure that shall be used by certified providers in assessing the risk of an offender recommitting a sex crime, and the threat to public safety. This administrative regulation establishes minimum treatment requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined in KRS 17.550(3).
   (2) "Board" is defined in KRS 17.550(1).
   (3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.
   (4) "Treatment services" is defined in KRS 197.420(2)(b).

Section 2. Procedures for Treatment of Sex Offenders. (1) Treatment shall conform to community standards of care, and shall include:
   (a) A diagnosis; and
   (b) A written treatment plan, which shall include: 1. Goals and objectives; and 2. Modalities of treatment and the rationale therefor.
   (2) Treatment shall be conducted in a psychotherapy format.
   (3) Treatment may utilize psychoeducational components where indicated.
   (4) Prior to providing treatment, an approved provider shall:
      (a) Submit a general treatment curriculum to the board that shall include the required elements in subsection 5(b) of this section; thereafter, proposed changes in the general treatment curriculum shall be submitted to the board for prior approval;
      (b) Obtain written informed consent for treatment from the offender;
      (c) Contact the offender's supervising probation and parole officer to discuss the offender and obtain offender information; and
      (d) Make a good faith effort to obtain the offender's mental health records.
   (5) An approved provider shall:
      (a) Provide psychological or pharmaco-therapy services or testing as needed or make the appropriate referral and act as liaison for the provision of services;
      (b) Utilize a treatment curriculum which, at a minimum, shall include:
         1. Treatment services as may be necessary to meet the needs of the individual offender;
         2. An emphasis on acceptance of responsibility by the offender for present and past sexual offending behavior;
         3. Gender and culture specific programming; and
         4. Education of the offender in:
            a. The cycle of sexual abuse;
            b. Human sexuality;
            c. Deviant arousal and its reduction;
            d. Cognitive restructuring;
            e. Relapse prevention;
            f. Partner and family interactions and support, if applicable;
            g. Victim empathy awareness; and
            h. Relationship skills.
      (c) Provide treatment consistent with current professional literature which minimizes the risk of reoffending and emphasizes community safety;
      (d) Provide eighty (80) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for a minimum of twenty-four (24) months with at least forty (40) face-to-face sessions conducted during the first twelve (12) months;
      (e) Maintain an individual record which shall include documentation of the offender's attendance and evaluative progress notes;
      (f) Obtain a release of information signed by the sex offender which allows the approved provider to release information to probation and parole personnel responsible for the sex offender's supervision and the Sex Offender Risk Assessment Advisory Board;
      (g) Notify the offender's supervising probation and parole officer in writing when the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;
      (h) Provide the Required Monthly Progress Report to the supervising probation and parole officer each month.
      (i) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider's treatment; and
      (j) Prepare a treatment summary at discharge from treatment and:
         (k) Provide written notice of the sex-offender's discharge from treatment and the reason for discharge to the supervising probation and parole officer within ten (10) days of discharge.

   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 564-2024, fax (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

KATHI PETERSON, Pay.D., Chairperson
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 5 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 May 31, 2005. 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: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation sets standards for court-ordered sex offender treatment.
   (b) The necessity of this administrative regulation: To conform to the requirements of KRS 17.550, et.seq.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides the treatment standards required for an individual to be an approved provider.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing treatment standards to mental health professionals who desire to treat sex offenders.
   (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 adds specific reporting requirements for approved providers concerning supervised offenders and corrects a typographical error.
      (b) The necessity of the amendment to this administrative regulation: To provide more efficient administration of the regulations regarding approved providers and to avoid unnecessary
revocation of approval of providers.
(c) How the amendment conforms to the content of the authorizing statutes: The regulation amends the treatment standards required for an individual to be an approved provider.
(d) How the amendment will assist in the effective administration of the regulations: To provide more efficient administration of the regulations regarding approved providers and to avoid unnecessary revocation of approval of providers.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects 61 approved providers and the sex offenders that they treat or evaluate.
(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: Approved providers were required to report information to probation and parole officers prior to the amendment. The approved providers may spend more or less time providing reports to probation and parole officers depending on their reporting efforts prior to the amendment.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None, if the approved provider was in compliance with the previous requirements in the regulation.
(b) On a continuing basis: None
(6) What is the source of 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: None.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None.
(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes conduct requirements of recruits attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms and Operator's License Required. A recruit shall provide the uniforms required in Section 6(5) of this administrative regulation and present a valid motor vehicle operator's license to participate in the basic training course.

Section 2. Removing a Recruit from the Course. (1) Unqualified 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; and
(b) Receive no credit for the part of the course he has completed.
(2) 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.
(3) A recruit shall be considered unqualified if he:
(a) Or his law enforcement agency files an incomplete or fraudulent application to attend basic training, or otherwise fails to comply with admissions requirements;
(b) Is not properly employed as a law enforcement officer and has not received special permission to attend;
(c) Arrives at the beginning of basic training 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 1:110 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;
(d) 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; or
(e) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;
(4) Agency's request: The department shall remove a recruit from basic training upon the department's receipt of a written request 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 members shall conform to [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 admission to the department's basic training course for two (2) [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 violation.
(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 penalties which may be imposed for the third or subsequent violation.
(c) Giving notice of disciplinary action to recruit. The department shall give written notice to a recruit of any penalty imposed upon him.
(d) Penalty records.
(a) The department shall keep a written record of any penalty imposed on a recruit.
(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) 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. Dangerous or Disruptive Situation. If the conduct or condition of a recruit 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 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 regarding 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. Penalty: 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, 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) Regardless of amount, 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 which shall include all dates of training and periods when residing in the dormitory, including the weekend, without the written permission to stay beyond the normal Friday evening checkout. "Attending a basic training course" shall not include the weekend during which recruits check out of the dormitory and return to their homes. 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 alcohol, beverages, or controlled or other intoxicating substances at the department's expense. Testing shall not be required to impose a penalty under this subsection, but may 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. Testing may be randomly requested of all members of a basic training class or all dormitory residents. If a test is requested, a recruit shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01%. 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 other persons or property. 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-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) A recruit 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), 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, or 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 repairs 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 unrecovered or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute the offense of 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 if 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 in 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 uniform 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 or department-issued 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 hairnet, 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 shall be 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 if 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 shall 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.

(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 pantries, cabinets, and the like 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. 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, 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 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. 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) For 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 recruits 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 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 representa-
tive.

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 a:
      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, a penalty shall not 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 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall 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;
   (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.

(3) The recruit shall be requested to answer the charges.

(4) 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;
VOLUME 31, NUMBER 11 — May 1, 2005

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 adminis-
   trative hearing as required by KRS 13B.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 accor-
dance with KRS Chapter 13B.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
May 23, 2005, at 9 a.m. in Room 211, Funderburk Building, Rich-
mond, Kentucky. Individuals interested in being heard at this hear-
ning shall notify this agency in writing at this hear-
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CONTACT PERSON: Stephen D. Lynn, Assistant General
Counsel, Department of Criminal Justice Training, Funderburk
Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102,
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 attend-
   ing the Department of Criminal Justice Training law enforcement
   basic training course.
   (b) The necessity of this administrative regulation: The regula-
   tion is necessary to establish clear conduct requirements for law
   enforcement recruits 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 Depart-
   ment of Criminal Justice Training to establish, supervise, and coordi-
   nate training programs and schools for law enforcement person-
   nel.
   (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, pro-
   cedures, and penalties for all who attend law enforcement basic
   training.
   (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 present amendment changes the expulsion period
   in Section 4(1)(a), better defines the alcohol policy in Section
   6(4)(a), and changes a part of the uniform requirement in Section
   6(8)(b)3.
   (b) The necessity of the amendment to this administrative
   regulation: The expulsion period is being amended because it ef-
   fectively ends any chance of a recruit becoming a law enforcement
   officer. The amendment permits the department to reevaluate sooner an expelled recruit that has learned from his or her mis-
   takes. The amendment to the alcohol policy is necessary to clearly
   establish the periods when a recruit can and cannot consume al-
   coholic beverages. The uniform policy is being amended to permit
   recruits to wear the current gray department-issued t-shirts.
   (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 administra-
   tion of the statutes: Please see response in (2)(b) herein.
   (3) List the type and number of individuals, businesses, organi-
   zations, or state and local governments affected by this adminis-
   trative regulation: All law enforcement agencies in the common-
   wealth 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 administra-
   tive regulation, if new, or by the change if it is an amendment: It is an-
   ticipated that agencies should experience little impact due to the
   amendment. The requirements for administrative appeals have been
   maintained 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 imple-
   mentation and enforcement of this administrative regulation: The
   restricted Kentucky Law Enforcement Foundation Program Fund
   (KLEFPF).
   (7) Provide an assessment of whether an increase in fees or
   funding will be necessary to implement this administrative regu-
   lation, if new, or by the change if it is an amendment: No increase is
   necessary.
   (8) State whether or not this administrative regulation estab-
   lishes 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 be-
   cause 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 Amend-
   ment of the U.S. Constitution may be implicated as well as Sec-
   tions 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Vehicle Regulation
(Amendment)

601 KAR 11:010. Fees relating to commercial driver's li-
enses.

RELATES TO: KRS Chapter 281A
STATUTORY AUTHORITY KRS 281A.150, 28A.300
NECESSITY, FUNCTION, AND CONFORMITY: KRS
281A.150, [as effective January 1, 1994] sets the maximum fee
allowed to be charged for various commercial driver's licenses. It
further allows the Transportation Cabinet to set the exact fees by
administrative regulation. KRS 281A.300 requires state and na-
tional criminal record checks of wanted or "hot file" records of any
person initially applying for, or initially renewing, a commercial
driver's license. It further allows a fee to be charged that is an
amount not greater than the actual cost of processing the request
and conducting the search. Additionally, HB 267, which was en-
acted by the General Assembly during the 2005 General Session,
raised the fees for an original or renewal motor vehicle license which affects commercial driver's license fees. This administrative regulation is promulgated to reflect the fee changes and to set the fees that are to be divided between the Transportation Cabinet, Department of State Police and the circuit court clerk (through the Administrative Office of the Courts).

Section 1. Application fee. (1) Except as set forth in subsection (2) of this section, an applicant for a commercial driver's license shall pay an application fee of twenty-four (24) dollars to the circuit court clerk. This fee shall include the fees for required vision, knowledge and skills testing.

(2) An applicant for a commercial driver's license who applies for a Class B or C commercial license in order to only drive a school bus, church bus, mass transit bus or nonprofit bus shall pay a fee of nine (9) dollars to the circuit court clerk. This fee shall include the fees for required vision, knowledge and skills testing.

Section 2. Instruction Permit. An applicant for a commercial driver's license instruction permit shall pay a fee of twelve (12) thirty-five (35) dollars to the circuit court clerk.

Section 3. [2] Commercial Driver's License [Original [Non-grandfathered]. (1) An applicant for an original [a] commercial driver's license [who does not meet the requirements of KRS 281A.200, and who has already been issued an instruction permit], shall pay a fee of sixty (60) dollars to the circuit court clerk [based upon the number of months the commercial driver's license is valid]. This fee shall include the twenty (20) dollar operator's license fee required by KRS Chapter 186 for a four (4) year license. [The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

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<th>License (Month)</th>
<th>Validity</th>
<th>Total Cost</th>
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<tr>
<td>37-48</td>
<td>25-36</td>
<td>$40.00</td>
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<td></td>
<td></td>
<td>$13.75</td>
</tr>
</tbody>
</table>

(2) An applicant for a commercial driver's license who does not meet the requirements of KRS 281A.200, and who has already been issued an instruction permit, shall pay a fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

<table>
<thead>
<tr>
<th>License (Month)</th>
<th>Validity</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>37-48</td>
<td>25-36</td>
<td>$40.00</td>
</tr>
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<td></td>
<td>13-24</td>
<td>$31.25</td>
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<tr>
<td></td>
<td>1-12</td>
<td>$22.60</td>
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<tr>
<td></td>
<td></td>
<td>$13.75</td>
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</tbody>
</table>

Section 4. Renewals. An applicant for renewal of a commercial driver's license shall pay a fee of forty-seven (47) thirty-five (35) dollars to the circuit court clerk. This fee shall include the twenty (20) dollar operator's license fee required by KRS Chapter 186 for a four (4) year license.

Section 5. Transfer from Another Jurisdiction. An applicant for a commercial driver's license who possesses a valid commercial driver's license issued by another licensing jurisdiction shall pay a fee of sixty (60) forty-nine dollar operator's license fee required by KRS Chapter 186 for a four (4) year license.

Section 6. Duplicate Commercial Driver's License. An applicant for a duplicate commercial driver's license shall pay a fee of twelve (12) ten (10) dollars to the circuit court clerk.

Section 7. Endorsements [or Class Upgrade]. (1) Except as set forth in subsection (2) of this section, an applicant for an additional commercial driver's license endorsement [or upgrade of commercial driver's license class] shall pay a fee of five (5) fifteen (15) dollars to the circuit court clerk.

(2) An applicant for an endorsement requiring skills testing shall pay a fee of twenty-four (24) dollars to the circuit court clerk [if the applicant is required to submit more than one (1) test there is an additional fee of five (5) dollars for each additional test].

Section 8. (1) Beginning May 31, 2005, in conjunction with the security threat assessment for persons applying for a hazardous materials endorsement as required by the USA PATRIOT Act of 2001 and pursuant to KRS 281A.300, a criminal records check of wanted or "hot file" records shall be required for persons initially applying for, or initially renewing, a Kentucky commercial driver's license instruction permit or commercial operator's license, or for persons adding an endorsement. The fee for the criminal records check of wanted or "hot file" records is three (3) dollars and shall be paid to the circuit court clerk and transmitted to the Kentucky State Police.

(2) If any outstanding warrants against the person are found, the Kentucky State Police shall notify the law enforcement agency which authorized the placement of the information on the National Crime Information Center for appropriate action. [School, Church, Mass-Transit and Nonprofit Bus Driver's License. An applicant for a commercial driver's license who applies for a Class B or C commercial license in order to only drive a school bus, church bus, mass transit bus or nonprofit bus shall pay his fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The fee shall be as follows:

<table>
<thead>
<tr>
<th>License (Month)</th>
<th>Validity</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>37-48</td>
<td>25-36</td>
<td>$20.00</td>
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<tr>
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<td>13-24</td>
<td>$19.00</td>
</tr>
<tr>
<td></td>
<td>1-12</td>
<td>$18.00</td>
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<td></td>
<td></td>
<td>$17.00</td>
</tr>
</tbody>
</table>

ROY MUNDY, Commissioner
BILL NHIBERT, Acting Secretary
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2005, at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Conference Room 612, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify the agency in writing five (5) workdays prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five (5) workdays prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by the Transportation Cabinet Office Building, Conference Room 612, Transportation Cabinet, 200 Mero Street, Frankfort, Kentucky 40622, the hearing will not be held.

CONTACT PERSON: Dana Fugazzi, Staff Attorney III, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Station: W6-20-01, Frankfort, Kentucky 40622, phone (502) 564-7650; fax (502) 564-5230.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Dana Fugazzi
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the fees to be charged for various commercial driver's licenses.
VOLUME 31, NUMBER 11 – May 1, 2005

(b) The necessity of this administrative regulation: Pursuant to KRS 281A.150, the cabinet is required to establish commercial driver's license fees by administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes the commercial driver's license fees as required by KRS 281A.150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the fees for the cabinet to charge for commercial driver's licenses.

(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 updates the regulation by simplifying the commercial driver's license fees. It also establishes the fee for criminal records checks which must be obtained by persons initially applying for, or initially renewing, a commercial driver's license pursuant to KRS 281A.300. Additionally, it reflects the operator's license fee increases enacted by the GA pursuant to HB 267 of the 2005 General Session.

(b) The necessity of the amendment to this administrative regulation: It is necessary to establish fees for criminal records checks pursuant to KRS 281A.300 and to reflect the increase in operator's license fees enacted by the GA pursuant to HB 267 of the 2005 General Session.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 281A.150 requires the cabinet to establish commercial driver's license fees by administrative regulation. KRS 281A.300 requires that persons initially applying for, or initially renewing, a commercial driver's license undergo a criminal records check and allows a fee to be charged for same. HB 267 of the 2005 General Session increased operator's license fees, which also increases the commercial driver's license fees. This amendment conforms to the authorizing statutes by establishing the fees to be charged.

(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: This regulation will affect commercial driver's license holders. There are an estimated 145,000 commercial driver's license holders in the commonwealth, which is less than 5% of the driving population.

(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 an increase in fees for commercial driver's licenses.

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

(a) Initially: Minor programming costs of less than $10,000.

(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: Road funds.

(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 established any fees or directly or indirectly increased any fees: Yes, this administrative regulation establishes a fee for the required criminal records checks pursuant to KRS 281A.300. It also increases commercial driver's license holder fees to reflect the increase in the fees for an original or renewal motor vehicle license pursuant to HB 267 of the 2005 General Session.

(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 regulated by it.

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)

702 KAR 6:100. Appeal procedures for school and community nutrition programs.


STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. This administrative regulation establishes the appeals procedure for a sponsor of a federal nutrition program.

Section 1. Actions that [Which] May Be Appealed. (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the following adverse actions:

(a) Denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity; or

(b) Withholding payment arising from administrative or follow-up review activity.

(2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, and responsible principals and responsible individuals, may appeal the following adverse actions:

(a) Denial of a new or renewing [an] institution's application for participation;

(b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;

(c) Notice of proposed termination of participation of [an] institution or facility or site;

(d) Suspension of an institution's agreement;

(e) Denial of an institution's application for start-up payments;

(f) Denial of an advance payment;

(g) Denial of all or part of a claim for reimbursement except for a late claim;

(h) Notice of proposed disqualification of a responsible principal or a responsible individual;

(i) Recovery of all or part of an advance in excess of the claim for the applicable period;

(j) Decision by the Department of Education not to forward to Food and Nutrition Service (FNS) an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim;

(k) Demand for the remittance of an overpayment; or

(l) [ii] Any other action of the Department of Education affecting the participation of an institution in the program or the institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:

(a) Denial of an application for participation;

(b) Denial of a sponsor's request for an advance payment;

(c) Denial of a sponsor's claim for reimbursement, except for a late claim under 7 C.F.R. 225.9(d)(6);

(d) Refusal of a state agency to forward to FNS [the Division of Child and Community Nutrition] an exception request for payment of a late claim or a request for an upward adjustment to a claim;

(e) A claim against a sponsor for remittance of a payment [claim];

(f) Termination of the sponsor or a site;

(g) Denial of a sponsor's application for a site; or

(h) Denial of a food service management company's application for a registration or the revocation of a food service management company's registration.
grieved by an adverse action of the Division of School and Community Nutrition (the "division") may appeal the action by filing a timely request for an appeal [a review]. The request shall be filed with the Director, Division of School and Community Nutrition, Department of Education, 2545 Lawrenceburg Road [4024-Capital Center Drive], Frankfort, Kentucky 40601.

(2) (b) The request shall be in writing and shall state the name and address of the program sponsor and the name and title of the person who signed the request.

(3) (c) The request shall be postmarked or received by the division prior to midnight of the first business day of the following month in the case of the Summer Food Service Program after receipt of the notice of adverse action. If the 15th day of the following month in the case of the Summer Food Service Program falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next business day which is not a Saturday, Sunday, or federal legal holiday.

(4) The division shall acknowledge receipt of the request for an appeal within ten (10) days of its receipt of the request.

(5) Any information on which the division's action was based shall be available for inspection by the institution and the responsible principal and responsible individual from the date of receipt of the request for an appeal. [§(d) A program sponsor, which files an appeal and request for review may examine and copy the information in the division files upon which the adverse action was based.]

(6) (e) During the review process, a program sponsor, responsible principal, responsible individual or food service management company shall:
1. Self-represent, if eligible; or
2. Be represented by legal counsel.

Section 3. Filing an Appeal. (1) [§(a)] A request for appeal shall clearly identify the adverse action being appealed, the basis of the appeal, and the relief or remedy sought. It shall also include the date of the letter or written communication from the division notifying the program sponsor or responsible individual of the adverse action, and the name and title of the division official who signed the letter or communication. If a hearing before a hearing officer is desired, that shall be clearly stated.

(2) If the institution's representative or the responsible principal and responsible individual or their representative fail to appear at a scheduled hearing, the right to a personal appearance before the designated hearing officer shall be waived unless the designated hearing officer agrees to reschedule the hearing.

(3) A representative of the state agency shall be allowed to attend the hearing to respond to the testimony of the institution and the responsible principal and responsible individual and to answer questions posed by the designated hearing officer.

(4) If a hearing is requested, the institution, the responsible principal and responsible individual, and the Department of Education shall be provided with at least ten (10) days' advance notice of the time and place of the hearing. If the institution is a Summer Food Service Program, the notice of the time and date of the hearing shall be provided at least five (5) days prior to the hearing, with the notice sent by certified mail, return receipt requested.

(5) (b) An appellant program sponsor may submit written information in support of its position at the time it files its appeal and request for review with a hearing officer. It may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action. In the case of the Summer Food Service Program, the appellant program sponsor may submit additional written information up to seven (7) calendar days after filing the appeal and request for review.

Section 4. Appeal Procedures. (1) [§(a)] The division shall forward any request for appeal to the Director, Division of Administrative Hearings, Office of the Attorney General. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the Division of School and Community Nutrition.

(2) [§(b)] The administrative hearing procedures of KRS Chapter 13B shall apply.

(3) The designated hearing officer shall make a determination based solely on the information provided by the state agency, the institution, and the responsible principal and responsible individual and based on federal and state laws, administrative regulations, policies and procedures governing the program.

(4) Within sixty (60) days of the Department of Education's receipt of the request for an appeal, or ten (10) days if the matter under appeal is a suspension of participation, the designated hearing officer shall inform the Department of Education, the institution's executive director and chairman of the board of directors, and the responsible principal and responsible individual of the outcome of the appeal.

(5) In the case of the Summer Food Service Program, the hearing shall be held within fourteen (14) days of the date of receipt of the request for an appeal and hearing, but not before the appellant's written documentation is received. In the case of the Summer Food Service Program, within five (5) working days after receipt of the appellant's hearing request, within five (5) working days after receipt of written documentation if no hearing is to be held, the designated hearing officer shall make a determination based on a full review of the administrative record, and inform the appellant of the outcome of the appeal by certified mail, return receipt requested.

(6) In the case of the Summer Food Service Program, the Department of Education's action shall remain in effect during the appeal process. However, participating Summer Food Service Program sponsors and states may continue to operate the program during an appeal of termination, and if the appeal results in the overturning of the Department of Education's decision, reimbursement shall be paid for meals served during the appeal process.

(7) Notwithstanding subsection 6 of this section, continued program operation shall not be allowed if the Department of Education's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor site has been terminated for this reason, the Department of Education shall specify this in its notice of adverse action. Pursuant to 7 C.F.R. 210.18(q)(9), 222.13(f)(2), 222.13(b)(12) and 226.8(b)(5)(140), the decision of the hearing officer shall be the final administrative determination.

(8) (c) In case of a denial of an application to participate in the program, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.

(9) (d) In case of a denial of all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

(10) (e) In case of the termination of an applicant's participation in the program, the determination of the hearing officer shall either sustain the termination or shall direct that the applicant be permitted to continue participation in the program.

GENE WILHOIT, Commissioner of Educaion
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2005 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 25, 2005, 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 May 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner

- 1894 -
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 establishes the procedure for appealing adverse actions taken against sponsors of the Special Milk Program, School Breakfast Program, National School Lunch Program, Child and Adult Care Food Program and Summer Food Service Program for Children.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of the National School Lunch Act of 1946, the Child Nutrition Act of 1966, the Agricultural Risk Protection Act of 2000 and the Grain Standards and Warehouse Improvement Act of 2000, as amended.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specific for the appeal process for sponsors of the programs listed above, including what actions may be appealed, how to file an appeal, and the timelines for appeals, hearings and decisions.
(d) How this administrative regulation currently assists or will assist in the effective administration of the programs: This administrative regulation provides the specific for the appeal process for sponsors of the programs listed above, when an "adverse action" as defined by the regulation, has been taken against them by the Department of 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: It makes a number of simple grammatical changes; it clarifies who may appeal, expands the grounds for appeal; clarifies the timelines for filing an appeal; clarifies the right to an administrative hearing; and clarifies the timelines for such hearings, receipt of documentation and response by the hearing official.
(b) The necessity of the amendment to this administrative regulation: Required by changes to the federal authorizing language as included in the latter two Acts of Congress listed above in (1)(b).
(c) How the amendment conforms to the content of the authorizing statute: It clarifies who may appeal, expands the grounds for appeal; clarifies the timelines for filing an appeal; clarifies the timelines for such hearings, receipt of documentation and response by the hearing official.
(d) How the amendment will assist in the effective administration of the statutes: It clarifies who may appeal, expands the grounds for appeal; clarifies the timelines for filing an appeal; clarifies the right to an administrative hearing; and clarifies the timelines for such hearings, receipt of documentation and response by the hearing official.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Sponsors of the programs listed in (1)(a) above, including school districts; child care centers; private and parochial schools; local government entities and faith-based organizations.
(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: Sponsors will have a clearer idea of the appeals process and timelines.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation. We do not expect that the amendment will increase the number of appeals.
(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 granted to the state agency that can be used for this purpose.
(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.

EDUCATION, ARTS, AND HUMANITIES
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:
(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
(2) Sponsor an annual meeting of its member schools;
(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;
(4) 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;
(5) 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;
(6) Advise the Department of Education of all legal action brought against the KHSAA by October 31;
(7) Permit 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;
(8) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;
(9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
(10) Permit the Board of Control to assess fines on a member school;
(11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;
(12) Establish a philosophical statement of principles to use as a guide in an eligibility case;
(13) 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 1681 (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

- 1895 -
(b) 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); and
(14) Conduct all meetings in accordance with KRS 61.605 through 61.850; and
(15) 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) KHSAA shall annually submit the following documents to the KBE by October 31:
(a) Draft budget for the next two (2) fiscal years, including the current year;
(b) End-of-year budget status report for the previous fiscal year;
(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
(d) A summary report of operations including financial, legal and administrative summaries of actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and
(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.
(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.


(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, 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 Board of Education, as required by KRS 156.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2005 at 5 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 25, 2005, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing 5 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 May 31, 2005. 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: KRS 156.070 requires the 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.
(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: These amendments make changes to the document incorporated by reference, in KHSAA Bylaws 6, 16, 23, 25, and the Due Process Procedures as adopted by the KHSAA Delegate Assembly.
(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which incorporates 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.
(c) 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 to the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input from member schools and districts or 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 governments affected by this administrative regulation: 178 School Districts
(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 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
(6) 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.
(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: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

785 KAR 1:130. GED eligibility requirements.

RELATES TO: KRS 151B.023, 151B.125
STATUTORY AUTHORITY: KRS 151B.023, 151B.410, EO 2004-725
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.410(1) requires the Department for Adult Education and Literacy to promulgate necessary administrative regulations and administer a statewide adult education and literacy system through the state. KRS 151B.023 designates the Department for Adult Education and Literacy to carry out the statewide mission on adult education. The department has the responsibility for all the administrative functions of the state in relation to the management, control, and operations of programs and services in adult education and literacy. KRS 151B.125 recognizes the General Educational Development (GED) Tests [test] for high school equivalency purposes in Kentucky. EO 2004-725 abolished the Department for Adult Education and Literacy and transferred its duties to the Council on Postsecondary Education. This administrative regulation establishes the eligibility requirements for taking the GED Tests [test].

Section 1. Eligibility Requirements. The [Except as provided in Sections 2 and 3 of this administrative regulation, the] GED Tests [test] shall be administered to an applicant with a Kentucky address who:
(1) Has reached his 19th birthday; or
(2) Is at least sixteen (16) [seventeen (17)] years of age [] and:
(a) has officially withdrawn from public or private school for ninety (90) days as certified by the local school district; or
(3) is [and]
(b) The applicant's last enrolled class has graduated; or
(c) The applicant has been out of formal instruction for a period of one (1) year.

Section 2. Existent Circumstance. An applicant at least sixteen (16) years of age who believes existent circumstances exist and who does not meet the conditions of Section 1 of this administrative regulation may request an exemption from the local school superintendent or designee in the district where the applicant resides. An exemption granted on the basis of existent circumstances or a denial shall be in writing. A copy of all existent circumstance decisions shall be mailed or faxed within five (5) working days of the decision to the state GED administrator. An applicant may appeal a denial by the local school superintendent to the Commissioner of the Department for Adult Education and Literacy.

Section 3. Exemptions. An applicant at least sixteen (16) years of age with a Kentucky address and is [shall be eligible to take the GED test if the applicant is]:
(a) [11] Committed or placed in a state correctional facility;
(b) [22] Enrolled in the Jobs Corps Program of Instruction;
(c) [33] Considered a state agency child, as defined by KRS 158.135(1)(a) and receives approval for the GED Tests [test] from his interdisciplinary team; or
(d) [44] Detained in a juvenile detention center or juvenile holding facility, and the applicant:
1. is at least one (1) year behind academically from his graduating class;
2. has a minimum stay in detention of thirty (30) days; and
3. is approved for the GED Tests [test] by the local school superintendent; or
(3) Enrolled in a Kentucky Department of Education approved Secondary GED Program and is approved for the GED Tests by the local school superintendent.

Section 2. [4.] Test Readiness. An applicant shall be certified as test-ready by an entity approved by Kentucky [a Department for Adult Education [and Literacy-designated entity]].
(1) Before taking the official GED Tests [test], an applicant shall:
(a) Successfully complete the Official GED Practice Test with the same passing scores required for the GED test or present a Kentucky Educational Television GED Connection Voucher; and
(b) Complete the Kentucky Adult Education GED Test [Testing] Application [Form]. This form shall be available from a county [local] adult education provider, local school district [superintendent], or the Kentucky [Department for Adult Education [and Literacy]]
(2) Military personnel shall:
(a) Not be required to complete the GED Test [Testing] Application [Form] prior to taking the test; and
(b) Complete the Military GED Application (Form 300-M) before a high school equivalency diploma shall be issued.

Section 3. [5.] Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Kentucky Adult Education GED Test Application, April 2005 ("GED Testing Application [DAEL-6]", revised 10/12/01 edition, Cabinet for Workforce Development, Department for Adult Education and Literacy); and
(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 6/98 edition, GED Testing Service, Washington, D.C.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Adult Education, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, [the Department for Adult Education—Literacy, Capital Plaza Tower—Third Floor—600—Mercy Street] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS D. LAYZELL, President
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2005 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 26, 2005, at 10 a.m. at the Council on Postsecondary Education, Conference Room E. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 2004, five working days prior to the hearing, of their intention to attend. If no notification 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 May 31, 2005. 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: B.J. Helton, Senior Associate, GED Administrator, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, Frankfort, Kentucky 40601, phone (502)
573-5114, ext. 102, fax (502) 573-5436, email: bj.helton@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. J. Helton,

(1) Provide a brief summary of:
   (a) What the administrative regulation does: In support of HB 178 (2004 regular session), the amendment reduces the waiting time to take the GED Tests allowing dropouts to be eligible to test before October 1. The amendment allows students in the Kentucky Department of Education Secondary GED Program to take the GED Tests.
   (b) The necessity of this administrative regulation: This regulation is mandated by KRS 151B.023 and 151B.410.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statutes.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation complies with the statutory change of status of dropout students and recognizes a new KDE 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: It shortens the time requirement before a dropout student may take the GED. It also provides students in the Option Program to test.
   (b) The necessity of the amendment to this administrative regulation: Under the current administrative regulation, a student may not take the GED within a year of dropping out or until the last enrolled class has graduated. Under the current regulation there is no provision for enrolled secondary students to take the GED.
   (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms explicitly to the requirements of HB 178, (2004 regular session).
   (d) How the amendment will assist in the effective administration of the statutes: This amendment conforms the GED eligibility requirements to legislative changes made in the status of high school dropouts and recognizes the eligibility of students in a new Secondary GED Program.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local providers of adult education in each county, local school districts, adult education students, and students in the Secondary GED Program.
   (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: Students who dropout will be eligible to take the GED at an earlier date; this may increase the number of high school dropouts who get their GED. Removing the artificial time barrier that restricted access to the GED for one year. Secondary students enrolled in an alternative Secondary GED Program will be permitted to take the GED.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially. No cost.
   (b) On a continuing basis. No cost.
   (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 increase in fees or funding will be necessary with the implementation of this new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Test fees are assessed, but these are covered in another administrative regulation. No fees or fee increases are involved in the administration of this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not appropriate under these circumstances. The regulation applies to all GED candidates equally.

EDUCATION CABINET
Department for Workforce Investment
Office of Employment and Training (Amendment)

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 341.190
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.190 requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the division.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 [having in the state in covered employment one (1) or more workers] shall complete and file with the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" UI-1 (Rev. 3/05 [694]) no later than the last day of the calendar quarter in which the coverage requirements is first met.

Section 2. Each employing unit shall complete and file with the Division of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 1/93);
(2) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report (Rev. 5/99);
(3) UI-3E, "Employer's Quarterly Unemployment Wage and Tax Report (EFT version) (Rev. 5/99);
(4) UI-3.2, "Request to Place Subject Employer's Account in Inactive Status (Rev. 1/90);
(5) [6] UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part (Rev. 3/05 [1993])";
(6) [6] UI-47, "Claim for Refund of Contributions (Rev. 8/93);
(7) [7] UI-74, "Application for Partial Payment Agreement (Rev. 4/88);
(8) [8] UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits (Rev. 3/92);
(9) [9] UI-203, "Overpayment and Fraud Detection (Rev. 4/96);

Section 3. If, in lieu of filing a paper report, any employing unit submits the information required in any report listed in Section 1 or Section 2 of this administrative regulation via electronic means provided or approved by the Division of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [6] UI-1, "Application for Unemployment Insurance Employer Reserve Account (Rev. 3/02 [693])";
(b) [6] UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 1/93);
(c) [6] UI-3, "Employer's Quarterly Unemployment Wage and Tax Report (Rev. 5/99);
(d) [6] UI-3E, "Employer's Quarterly Unemployment Wage and Tax Report (EFT version) (Rev. 5/99);
(e) [6] UI-3.2, "Request to Place Subject Employer's Account in Inactive Status (Rev. 1/90);
(f) [6] UI-21, "Report of Change in Ownership or Discontinuance of Business in Whole or Part (Rev. 3/05 [1993])";
(g) [6] UI-47, "Claim for Refund of Contributions (Rev. 8/93);
(h) [6] UI-74, "Application for Partial Payment Agreement (Rev. 4/88);
(i) [6] UI-203, "Overpayment and Fraud Detection (Rev. 4/96);

This material may be inspected, copied, or obtained at the
Office of the Director of Unemployment Insurance [Commissioner for Employment Services], 275 E. Main Street, 2E (2W), Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

Dr. Penny Armstrong, Executive Director
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRRC: April 14, 2005 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2005 at 10 am (EDT) at Office of Employment and Training, Executive Director's Conference Room, 275 East Main Street, 2nd Floor, Frankfort, Kentucky 40621. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2005 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 May 31, 2005. 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: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, phone (502) 564-2260, fax (502) 564-5502.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry W. Moore

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation stipulates the reports that employers are required to file in order to provide the information needed for the operation of the unemployment insurance program.
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to identify the information required by the secretary pursuant to KRS 341.190.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program. KRS 341.190 provides that the secretary may require employers to furnish information necessary for the administration of the Unemployment Insurance Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for a consistent method of obtaining the employer information required for the administration of the Unemployment Insurance Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: How the amendment will change this existing administrative regulation:
(a) This amendment updates the most recent revisions of 2 existing reports; deletes 1 obsolete report; and provides that employers who submit reports electronically using formats approved by the division satisfy the requirement for reporting imposed by this administrative regulation.
(b) The necessity of the amendment to this administrative regulation: Compliance with SB 113 enacted by the 2005 GA necessitates collection of additional information relating to common ownership of businesses. This has resulted in revisions to existing required reports.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 341.115 provides that the secretary shall have the power to adopt regulations necessary for the administration of the unemployment insurance program. KRS 341.190 provides that the secretary may require employers to furnish information necessary for the administration of the unemployment insurance program.
(d) How the amendment will assist in the effective administration of the statutes: KRS 341.540, as amended by SB 113, requires the secretary to develop procedures to identify common ownership of businesses. Revisions to reports required under this administrative regulation will assist in identifying common ownership.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 80,000 Kentucky employers may 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: Newly liable employers and employers transferring existing businesses will be required to provide additional information regarding common ownership of businesses.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Minimal initial cost required to replace existing report stocks and to revise current web site.
(b) Mandatory: None
(c) Continuing basis: None
(d) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 100% federally funded from unemployment insurance administration grant.

(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 will be required to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering was not applied because the administrative regulation applies equally to all employers subject to KRS Chapter 341.

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. State what unit, part, or division of local government this administrative regulation will affect.

2. This administrative regulation could affect any local governmental entity with employment subject to KRS Chapter 341.

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 employment reporting by local governmental entities subject to KRS Chapter 341.

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 (+/-): None
Expenditures (+/-): None
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Building Codes Enforcement
(Amendment)


RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 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. EO filed July 9, 2004 created the Office of Housing, Buildings and Construction which shall be headed by an executive director. This administrative regulation establishes the Kentucky Building Code’s general provisions.

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 property located outside the corporate limits of a municipality on at least ten (10) acres and having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) and qualified by and registered with the property valuation administrator in that county.

(6) “Fire Code Official” means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in 815 KAR Chapter 10.

(7) “Industrialized building system” or “building system” is defined in KRS 198B.010(16).

(8) “KBC” means the Kentucky Building Code as established in this administrative regulation.


(10) “Kentucky Standards of Safety” means the administrative regulations established in 815 KAR Chapter 10, which serve as the fire prevention code for existing buildings as well as a supplement to this code, where applicable.

(11) “KRS” means the Kentucky Revised Statutes.

(12) “Manufactured home” is defined by KRS 198B.010(23) and 227.550(7).

(13) “Modular home” means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.

(14) “Ordinary repair” is defined by KRS 198B.010(19).

(15) “Single-family dwelling” or “one (1) family dwelling” means a single unit providing complete independent living facilities for one 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.

(16) “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.

(17) “Two (2) family dwelling” means a building containing not more than two dwelling units which are connected.

Section 2. Administration and Enforcement of the Building Code. (1)(a) Notwithstanding the requirements of the International Building Code/2000, the Kentucky changes set forth in the 2003 Kentucky Building Code Supplement shall be mandatory and shall supersede any conflicting provision of the international code.

(b) As provided in subparagraph 2 of this paragraph and as superseded by the provisions of this administrative regulation or the 2003 Kentucky Building Code Supplement, the International Building Code/2000, First Edition, Chapters 1 through 35 shall be the mandatory state building code for Kentucky for all buildings.

2. One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.


Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department.

(1) Fast track elective. A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee. The additional fifty (50) percent fee shall not be less than $400 and not more than $3,000. The entire fee shall be paid at the time of the initial plan submission.

(2) New buildings.

(a) The departmental inspection fees shall be calculated by:

1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and

2. Computing the square footage by the outside dimensions of the building.

(b) The fee for buildings with multiple or mixed occupancies may be calculated using the cost per square foot multiplier of the predominant use.

(3) Table 121.3.1, Basic Office [Department] Fee Schedule. The basic plan review or inspection fee shall be:

(a) Assembly occupancies, eight and one-half (8.5) cents;
(b) Business occupancies, seven and one-half (7.5) cents;
(c) Day care centers, seven and one-half (7.5) cents;
(d) Educational occupancies, seven and one-half (7.5) cents;
(e) Frozen food plants, six and one-half (6.5) cents;
(f) High hazard occupancies, seven and one-half (7.5) cents;
(g) Industrial factories, six and one-quarter (6.25) cents;
(h) Institutional occupancies, eight and one-half (8.5) cents;
(i) Mercantile occupancies, seven and one-half (7.5) cents;
(j) Residential occupancies, seven and one-half (7.5) cents;
(k) Warehouses, five and one-half (5.5) cents;
(l) All other nonresidential, six and one-half (6.5) cents.

3. Additions to existing buildings. Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition. The minimum fee for review of plans under this subsection shall be $200.

(5) Change in use. Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions. The minimum fee for review of plans under this subsection shall be $200.

(6) Alterations and repairs.

(a) Plan review fees for alterations and repairs not otherwise covered by this fee schedule shall be calculated by using the lower result of:

1. Multiplying the cost for the alterations or repairs by 0.0025; or

2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.

(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.

(c) The minimum fee for review of plans under this subsection shall be $200.

(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied for the specialized plan reviews listed in this subsection:

(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:

1. 4-200 sprinklers, $150;
2. 201-300 sprinklers, $175;
3. 401-400 sprinklers, $210;
4. 401-750 sprinklers, $250;
5. Over 750 sprinklers, $250 plus twenty (20) cents per sprinkler over 750.

(b) Fire detection system review fee:

1. Zero to 20,000 square feet shall be $150;
2. Over 20,000 square feet shall be $150 plus twenty (20) dollars for each additional 10,000 square feet in excess of 20,000 square feet.

(c) Standpipe plan review fee: $150 (combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule).
(d) Carbon dioxide suppression system review fee:
1. One (1) to 200 pounds of agent shall be $150;
2. Over 200 pounds of agent shall be $150 plus two (2) cents per pound in excess of 200 pounds.

(e) Clean agent suppression system review fee:
1. a. Up to thirty-five (35) pounds of agent shall be $150;
   b. Over thirty-five (35) pounds shall be $150 plus six (6) cents per pound in excess of thirty-five (35) pounds.
2. The fee for gaseous systems shall be five (5) cents per cubic foot and not less than $150.

(f) Foam suppression system review fee:
1. Fifty (50) cents per gallon of foam concentrate if the system is part of an automatic sprinkler system.
2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.
3. The fee for review of plans under this section shall not be less than $150 or more than $1,500.

(g) Commercial range hood review fee: $150 per hood.

(h) Dry chemical systems review fee (except range hoods):
1. One (1) to thirty (30) pounds of agent shall be $150;
2. Over thirty (30) pounds of agent shall be $150 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.

(i) Flammable, combustible liquids or gases and hazardous materials plan review fee: $100 for the first tank, plus fifty (50) dollars for each additional tank and $100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection or associated components.

(j) Boiler and unfired pressure vessel fees: plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15:027.

Section 4. General. All plans shall be designed and submitted to conform to the 2002 edition of the Kentucky Building Code.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:


(3) This material may be inspected, copied, or obtained, subject 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.

LAJUNA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: February 24, 2005
FILED WITH LRC: April 8, 2005 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005 at 2 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 16, 2005, 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 May 31, 2005. 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, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, 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 uniform Kentucky Building Code required pursuant to KRS 1988.050.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to adopt the Kentucky Building Code as required pursuant to KRS 1988.050.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It utilizes the International Building Code as the basis for construction standards and allows the Board of Housing, Buildings and Construction to make amendments for Kentucky after due consideration of equivalent safety measures as required by KRS 1988.050.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth standards authorized by the statute for the enforcement of the code, incorporating all applicable laws into its processes.

(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 will change the material incorporated by reference by amending the 2003 version of the Kentucky Building Code Supplement. These changes include: adding a new section to Chapter 30, 3006.4.1, machine room elevators to provide additional safety; adding a new section to Chapter 30, 3002.8, Access to hoistway machinery spaces and 3002.8.1, stop switch, to increase fire safety for maintenance personnel and inspectors; adding a new section to Chapter 1, section 121.3.17, Spectator service system review fee, (adjust fee); adding a new section to Chapter 1, section 106.3.4.2, Seismic design professional in responsible charge, clarify responsibility of design professional; adding a new subsection (1601.2.1) to Chapter 16, Design professional in responsible charge, clarify responsibility of design professional in responsible charge in ensuring design loads and other information are clearly indicated on construction documents; adding new item in Chapter 16, section 1603.1, General, to include Seismic Design Category and insert new subsection, 1603.1.5.1, Seismic force resisting system applicability to building components, clarification of design professionals responsibilities; amend Chapter 30, sections 3011.4, Incidents reported and recorded and 3011.5, Removal of damaged parts, clarifies intent (interpretation) of code requirements of reporting entrapments and incidents along with achievement reporting; amend Chapter 5, Section 502, Definitions to add Fire Lane definition and add new Section modifying the IFC requirements for fire apparatus access roads and inserts it directly into this new subsection; amends Chapter 12 to coordinate with a similar change in the Kentucky Residential Code to ensure that both codes have the same requirement; Chapter 9, clarification of when systems need to be inspected; Chapter 35, Referenced Standards, to resolve the confusion as to how often inspections are needed and cost to owners; Chapter 11, amends Section 1101.2 to achieve same level of accessibility design and construction as required or allowed by ADAAG; Chapter 15, amends Section 1503.4 and inserts new subsections clarifying the minimum requirements of the code and inconsistencies regarding roof drainage; Chapter 35, amend ICC to include IICANSI A117.1 to achieve same level of accessibility; Chapters 13 and 35, amend to bring Kentucky into compliance with the Federal Energy Conservation Act; Chapter 35, update the National electrical code to the 2005 edition.
(b) The necessity of the amendment to this administrative regulation: These changes will provide additional clarity and convenience to users of the Kentucky Building Code. In addition, they recognize the need to date treatment of new building techniques and methods.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 1988.050(4) requires continuing review of the building code and requires adoption of new materials, tech-
Section 2. General Requirements. (1) Mandatory licensure. Any person, other than one exempted by KRS 198B.6574, who is engaged in the business of HVAC contracting shall comply with applicable administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Each licensee shall complete eight (8) hours of continuing education, approved by the board, prior to renewal of the license [for the next year].

(3) Supervision: 
(a) The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensees. 
(b) The master shall assign each apprentice to the oversight of one (1) or more journeyman. 
(c) The master shall not personally engage in actual installation, maintenance, alteration or remodeling or repair unless the master also possesses a journeyman license.
(d) Company license. A licensee who is an employee of a company and whose license represents the company shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in section 7(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application. 
(a) An applicant seeking a master HVAC contractor license shall submit to the board: 
1. A completed Master HVAC Contractor License Application on Form HVAC 1; 
2. A nonrefundable initial license application fee of $250; 
3. Proof of satisfactory completion of the examination required by section 4 of this administrative regulation; 
4. Proof of the applicant's experience as required by KRS 198B.658(1)(b) and this administrative regulation; [and]
5. A passport-sized color photograph of the applicant; and
6. [6] Proof of insurance as required by KRS 198B.669. [and] 
If the applicant is an employee representing a company, state the company name on the application form. The company may provide the insurance certificates and shall subject to this administrative regulation.

(2) Termination of application. The initial application shall remain pending until all requirements are met, up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.

(1) The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of all types of HVAC systems.

(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request. An oral examination shall be given upon good cause shown.

(3) An applicant shall successfully complete: 
(a) The examination known as the "Kentucky Master HVAC Contractor Examination" which is developed, administered and scored by the International Code Council [testing company: Exper, 2100 N.E. 53rd Avenue, Gainesville, Florida 32605, telephone (800) 280-3926] with a passing grade of seventy (70) percent; or
(b) An applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the testing company [... Exper, 2100 N.E. 53rd Avenue, Gainesville, Florida 32605, telephone (800) 280-3926] or other [testing agency] approved by the board.

(5) The examination fee shall be set by the testing company and paid directly to the testing company [fifty (50)-dollars and shall accompany the application for examination to Exper].

(6) The examination shall be provided and administered by the
approved company or agency [Experior] as often as necessary but at least four (4) times a year at various locations.
(7) A passing score on the examination shall be valid for a period of two (2) years.
(8) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examinations administered by the International Code Council. The person or group submitting the examination must demonstrate that the examinations cover the same material and require the same level of knowledge as the International Code Council examinations.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section.
(1) Minimum experience. An applicant shall have at least two (2) years' experience. Applicants shall receive credit for experience as follows:
(a) Credit for experience in the HVAC business obtained after July 1, 1995, shall be for HVAC work under the supervision of a master.
(b) Credit for experience obtained prior to July 1, 1995 shall be for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.
(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be required by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 6. Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, in accordance with subsection (5) of this section, application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month. Licenses shall be renewed [June 30 of] each year.
(2) A renewal fee of $250 shall be paid prior to renewal. The office [department] shall send renewal application cards to each licensee each year to be returned with the required fee.
(3) Renewal application cards filed late, but no more than ninety (90) days after the last day of the licensee's birth month [later than September 29], shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the renewal fee.
(4) Failure to renew ninety-one (91) days after the last day of the licensee's birth month [by September 29] shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.
(5) Licenses which have been placed in inactive status are exempt from annual renewal. They shall be reactivated upon payment of a renewal fee for the year reactivated, the reactivation fee and compliance with continuing education requirements for each year of inactive status.
(6) If an initial license will be for a period of less than twelve (12) months, the initial license fee may be reduced on a pro rata basis.
(7) (6) The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if the applicant fails to:
(a) Pay the fees required for renewal, reactivation and restoration, if applicable;
(b) Comply with the continuing education requirements established in Section 2(2) of this administrative regulation; or
(c) Provide the current insurance certificate required by KRS 198B.668 and this administrative regulation.
(8) Licensees who have not previously provided a passport-sized color photograph shall provide one (1) with their first renewal application filed immediately following the effective date of this administrative regulation.

Section 7. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:
(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.
(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until the licensee requests reactivation in accordance with Section 6(5) of this administrative regulation.
(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 6(5) of this administrative regulation.
(4) Duplicate license fee. The fee for the change of information required by Section 2(4) of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 8. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Housing, Buildings and Construction, HVAC Division, 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
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 31, 2005 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005, at 9 a.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 16, 2005, 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 May 31, 2005. 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, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0594, fax (502) 573-1087.

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 updates the application and renewal process for Master HVAC Contractor licenses. It also changes the approved testing provider for these licenses.
(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient operation of the HVAC licensing program and will help protect the safety of licensees and the public by reducing the possibility of identity theft.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.664(1) requires the Kentucky Board of HVAC Contractors to promulgate administrative regulations to administer the HVAC licensing program. This amendment provides procedural and administrative changes re-
VOLUME 31, NUMBER 11 – May 1, 2005

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(Amendment)

315 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

RELATES TO: KRS 198B.650-198B.689
STATUTORY AUTHORITY: KRS 198B.654
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations requiring persons engaged in the heating, ventilation and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the requirements of experience, examination, fees, application form and other administrative requirements for licensing journeyman HVAC mechanics. This amendment is necessary in order to increase the annual license renewal fee and note the change in the testing company administering the examination.

Section 1. Definitions. (1) "HVAC" is defined by KRS 198B.650(1), (2), (3), (5) and (7).
(2) "Master HVAC contractor" or "master" is defined by KRS 198B.650(12).
(3) "Journeyman HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10).

Section 2. General Requirements. (1) Mandatory licensure. A person engaging in HVAC work shall comply with the applicable requirements in this administrative regulation.
(2) Continuing education. Each journeyman licensee shall complete eight (8) hours of continuing education, approved by the board, prior to renewal of the license for the next year.
(3) The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. An applicant seeking a journeyman HVAC mechanic license shall submit to the board:
(a) A completed journeyman HVAC Mechanic Application on Form HVAC 2, September, 1995.
(b) A nonrefundable initial license application fee of fifty (50) dollars;
(c) Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation;
(d) Proof of the applicant's experience as required by KRS 198B.658(2)(b) and Section 5 of this administrative regulation;
(e) A passport-sized color photograph of the applicant.
(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.
(1) The examination shall test the applicant's basic knowledge of codes, standards and of current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.
(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request. An oral examination shall be given upon good cause shown.
(3) An applicant shall successfully complete:
(a) The examination known as the "Kentucky Journeyman HVAC Mechanic Examination" which is developed, administered, and scored by the International Code Council (testing company: Experex, 100 N.E. 53rd Avenue, Gainesville, Florida 32653, telephone: (800)-280-3926) with a passing score of seventy (70) per-

- 1904 -
cent; or

(b) The applicant shall pass another test or method of examination deemed equivalent by and approved by the board.

(4) Requests to sit for the examination shall be made directly to the International Code Council (Exterior) or other testing agency approved by the board.

(5) The examination fee shall be forty (40) dollars and shall accompany the application for examination to Exterior.

(6) The examination shall be provided and administered by Exterior as often as necessary but at least four (4) times a year at various locations.

(7) A passing score on the examination shall be valid for a period of two (2) years.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have at least two (2) years experience. Applicants shall receive credit for experience as follows:

(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.

(b) Credit for experience obtained prior to July 1, 1995 shall be for work as an actively engaged and lawfully qualified self-employed contractor/mechanic and for work under another Kentucky HVAC contractor.

(c) Credit for completion of one (1) year of teaching experience in a board or state approved HVAC technical education program shall be considered equivalent to one (1) year employment.

(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

(3) A minimum of 3,000 work hours to be completed as part of the two (2) years experience requirement of subsection (1) of this section.

(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

Section 6. Renewal Requirements and Procedures. (1) A renewal fee of fifty (50) dollars shall be paid prior to renewal. The office (department) shall send renewal cards to each licensee to be returned no later than the last day of the licensee's birth month. Licenses shall be renewed each year (June 30).

(2) A journeyman HVAC license renewal filed late, but no more than ninety (90) days after the last day of the licensee's birth month [later than September 29], shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation shall be added to the renewal fee.

(3) Failure to renew within ninety-one (91) days after the last day of the licensee's birth month (by September 29) shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(4) Requests for renewal of a licensed journeyman HVAC mechanic shall be denied if any of the following occur:

(a) An applicant fails to pay the fees required for renewal and restoration, if applicable; or

(b) An applicant fails to comply with the continuing education requirements.

(5) Licensees who have not previously provided a passport-sized color photograph shall provide one (1) with their application for renewal immediately following the effective date of this administrative regulation.

Section 7. Special Services and Fees. In addition to the initial license application fee, examination fee, and renewal fee, the following special fees shall be applied:

(1) Restoration fee. The fee for renewal of expired licenses, pursuant to Section 6(2) of this administrative regulation, shall be twenty-five (25) dollars.

(2) Duplicate license fee. Verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.

Section 8. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 198B.672.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office (Department) of Housing, Buildings and Construction, HVAC Division, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

LAJJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 31, 2005 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005, at 10 a.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 16, 2005 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 May 31, 2005. 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, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, 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 updates the application and renewal process for Journeyman HVAC licenses.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for the efficient operation of the HVAC licensing program and will help protect the safety of licensees and the public by reducing the possibility of identity theft.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 198B.654(1) requires the Kentucky Board of HVAC Contractors to promulgate administrative regulations to administer the HVAC licensing program. This amendment provides procedural and administrative changes regarding how and when licensees will renew their licenses and changes the approved testing provider.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The birth month licensing provisions will reduce administrative costs for license renewals while providing greater convenience for licensees. Requiring photographs of licensees will help protect the public from fraud and the licensees from identity theft. Changes to the testing provider will provide greater availability and more flexibility for license applicants. Updated application forms will better reflect the requirements for licensure.

(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 updates the application and renewal process for Journeyman HVAC licenses.

(b) The necessity of the amendment to this administrative regulation: The update is necessary to make the HVAC licensing procedure more efficient and safer for licensees and the public.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 198B.654 (1) requires the Kentucky Board of HVAC Contractors to promulgate administrative regulations to administer the HVAC licensing program. This amendment provides procedural and administrative changes regarding how and when licensees will renew their licenses and changes the approved testing mechanism. This amendment assists in the effective administration of the statutes: The birth month licensing provisions will reduce administrative costs for license renewals while providing greater convenience for licensees. Requiring photographs of licensees will help protect the public from fraud and the licensees from identity theft. Changes to the testing provider will provide greater availability and more flexibility for license applicants. Updated application forms will better reflect the requirements for licensure.

(3) List the types and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Approximately 9,300 Journeyman HVAC licensees statewide, new applicants for Journeyman HVAC licenses, Division of HVAC.

(4) Provide an estimate of how many of the above groups or entities will be impacted by the implementation of the administrative regulation, if new, or by the change, if it is an amendment: Licensees will be required to provide a color photograph. Most licensees will have their license renewal month changed to their birth month.

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

(a) Initially: N/A. Administrative costs should be reduced by these amendments. In the first year after implementation of the amendment, some licensing revenue may be delayed until later in the fiscal year or until the next fiscal year.

(b) Ongoing: Administrative costs should be reduced as a result of these changes.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Division of HVAC is funded by license fees.

(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 new fees or funding will be required.

(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 not used. All licensees are required to renew in their birth month and provide a color photograph.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning

Amendment

815 KAR 8:045. "Limited" licenses for journeyman HVAC mechanics.

RELATES TO: KRS 198B.658, 198B.666
STATUTORY AUTHORITY: KRS 198B.658
NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC contractor's law. This administrative regulation is a supplement to 815 KAR 8:020, and establishes a mechanism for the board to review and approve relevant experience and establish relevant examinations when an applicant seeks to become licensed to perform limited functions pursuant to the journeyman HVAC licensing law. This administrative regulation is necessary to treat qualified persons similarly by allowing applicants to be licensed according to their qualifications, and in order to meet the intention of KRS Chapter 13A as it relates to tiering of administrative regulations.

Section 1. Application for Limited Licenses. Applicants seeking to be licensed as a journeyman mechanic under 815 KAR 8:020, but who choose (electees) to use their experience and career goals to function in a limited capacity, (shall comply with the application requirements of 815 KAR 8:020, except that they may request, in writing, and) shall be granted a limited license upon proof of experience and examination, as follows:

(1) "Limited" journeyman HVAC duct mechanic - An applicant seeking a "limited" journeyman HVAC duct mechanic license shall submit to the board:

(a) A completed limited journeyman HVAC duct mechanic license on Form HVAC 4, February 2005;
(b) A nonrefundable initial license application fee of fifty (50) dollars;
(c) Proof of satisfactory completion of the "Kentucky Limited Journeyman HVAC Duct Mechanics Examination" developed and administered by the International Code Council.
(d) A passport-sized color photograph of the applicant; and
(e) Proof of the applicant's experience as required by KRS 198B.658(2)(b) and by 815 KAR 8:020, Section 5. (The applicant shall apply for, provide proof of relevant experience of duct work and successfully pass the examination given by the Board and Associates known as "Journeyman HVAC Duct Mechanic - KY001");

(2) "Limited" journeyman HVAC installer mechanic – An applicant seeking a "limited" journeyman HVAC installer mechanic license shall submit to the board:

(a) A completed Limited Journeyman HVAC installer mechanic license on Form HVAC 5, February 2005;
(b) A nonrefundable initial license application fee of fifty (50) dollars;
(c) Proof of satisfactory completion of the "Kentucky Limited Journeyman HVAC Installer Examination" developed and administered by the International Code Council.
(d) A passport-sized color photograph of the applicant; and
(e) Proof of the applicant's experience as required by KRS 198B.658(2)(b) and by 815 KAR 8:020, Section 5.

(3) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

(4) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examinations administered by the International Code Council. The person or group submitting the examination must demonstrate that the examinations cover the same material and require the same level of knowledge as the International Code Council examinations. The applicant shall apply for, provide proof of relevant experience of altering and installing and successfully pass the examination given by the Board and Associates known as "Journeyman HVAC Installer Mechanic - KY001".

Section 2. Limited Licenses and Responsibilities. (1) A person licensed under the alternative limited licensing provisions of this administrative regulation may [to] work independently within the range of the limited license authorization while under the general supervision of a master HVAC contractor.

(2) A person holding a limited license shall not hold himself out as complying with all the journeyman HVAC mechanic provisions and examination requirements of 815 KAR 8:020, and a limited license under this administrative regulation shall not replace the requirement that each master HVAC contractor shall have in his or her employing one (1) journeyman HVAC mechanic whose license is not limited.

(3) A person holding a "limited" license, pursuant to Section 1(1) or (2) of this administrative regulation, shall serve under the general supervision of the master HVAC contractor.

Section 3. Renewal Requirements and Procedures. Licenses issued pursuant to this administrative regulation shall be renewed as described in 815 KAR 8:020, Section 6.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form HVAC 4, Journeyman HVAC Limited Installer Li-
(b) "Form HVAC 5, Journeyman HVAC Limited Duct Mechanic License Application," February 15, 2005.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Office of Housing, Buildings
and Construction, Division of Heating, Ventilation and Air Condi-
tioning, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-
5405. Monday through Friday, 8 a.m. to 4:30 p.m.
LAUJANA S. WILCHEER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILE WITH LRC: March 31, 2005 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
May 23, 2005, at 11 a.m. (EDT), in the Office of Housing, Build-
ings, 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 16, 2005, five working days prior
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 regulations. 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 May 31,
2005. Send written notification of intent to be heard a the public
hearing or written comments on the proposed administrative regu-
lation by the above date to the contact person:
CONTACT PERSON: Frank L. Dempsey, General Counsel,
Office of Housing, Buildings and Construction, 101 Sea Hero
Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, 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 admi-
 nistrative regulation amends the applications and amends the re-
newal process for limited journeyman HVAC licenses.
(b) The necessity of this administrative regulation: This admi-
 nistrative regulation is necessary for the efficient operation of the
HVAC Licensing Program and will help protect the safety of licen-
sees and the public by reducing the possibility of identity theft.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 198B.654(1) requires the Ken-
tucky Board of HVAC Contractors to promulgate administrative
regulations to administer the HVAC licensing program. This
amendment provides procedural and administrative changes and
incorporates the forms used to apply for licenses, requires a color
photograph of the applicant and changes the approved testing
to the public from fraud and the licensees from identity theft. Changes to the testing provider
will provide greater availability and more flexibility for license appli-
cants. (2) If this is an amendment to an existing administrative
regulation, provide a brief summary of:
(a) How the amendment will change this existing administra-
tive regulation: This administrative regulation updates the application
and renewal process for limited journeyman HVAC licenses.
(b) The necessity of the amendment to this administrative
regulation: The update is necessary to make the HVAC licensing
procedure more efficient and safer for licensees and the public.
(c) How the amendment conforms to the content of the
authorizing statutes: KRS 198B.654(1) requires the Kentucky
Board of HVAC Contractors to promulgate administrative regu-
lations to administer the HVAC Licensing Program. This amendment
provides procedural and administrative changes regarding how
and when licensees will apply for and renew their licenses and changes the approved testing provider.
(d) How the amendment will assist in the effective administra-
tion of the statutes: Requiring color photographs of licensees will
help protect the public from fraud and the licensees from identity
The changes to the testing provider will provide greater availability
and more flexibility for license applicants. Updated application
forms will better reflect the requirements for licensure.
(3) List the type and number of individuals, businesses, or
state and local governments affected by this administrative
regulation: Approximately 2,000 limited journeyman HVAC
licensees statewide, new applicants for Journeyman HVAC licen-
ses, Division of HVAC.
(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: Licensees
will be required to provide a color photograph. Two new appli-
cation forms are adopted and incorporated.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: Negligible. New forms will replace old forms as they
run out.
(b) On a continuing basis: Negligible
(c) What is the source of funding to be used for the implement-
ation and enforcement of this administrative regulation: The Divi-
sion of HVAC is funded by license fees.
(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 new fees or
funding will be required.
(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? Tiering is not used. All applicants
for each class of license are subject to the same requirements.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office Housing, Buildings and Construction
Office of the State Fire Marshal
(Amendment)
815 KAR 35:060. Licensing of electrical contractors, elec-
tricians, and master electricians pursuant to KRS 227A.080.
RELATES TO: KRS 227A.010, 227A.080, 227A.080, 227A.100
STATUTORY AUTHORITY: KRS 227A.040(1)(b), 227A.080, 227A.100(9)
NEECESSITY, FUNCTION, AND CONFORMITY: KRS
227A.060 makes the Office of Housing, Buildings and Construc-
tion, to promulgate administrative regulations to establish a process
for the licensing of electrical contractors, electricians, and master
electricians. This administrative regulation establishes the eligibility
requirements and application procedures for the licensing of elec-
trical contractors, electricians, and master electricians. This
amendment will correct the hearing procedure. add section to in-
clude reciprocity applications, changes Experior testing provider
to "a provider approved by the Office of Housing, Buildings and
Construction", and clarifies the applications for electrical contractor,
electrician and master electrician licenses.
Section 1. Application Procedure. An applicant for license
pursuant to KRS 227A.060 shall:
(1) Complete an application as required by Section 2 of this
administrative regulation;
(2) Pay the application fee required by Section 3 of this ad-
ministrative regulation;
(3) Provide the application form either Form SFM-EC-2 or Form SFM-EC-
3 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 or employer identification number;
(7) Applicant's email address;
(8) Licenses applied for;
(9) For master electrician or electrician, a listing of the applicant's experience in the electrical industry, including business name and address, job title and supervisor's name;
(10) For master electrician or electrician, 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 164.772(3);
(12) For master electrician or electrician licenses, a passport-sized color 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' compensation coverage and the policy number of each coverage.
(15) Applicants for reciprocity shall complete Form SFM-EC-4 and shall comply with the requirements set forth in the reciprocity agreement with the state in which they are licensed.

Section 3. Application and Renewal Fees. (1) The application fee shall be:
(a) $200 for an electrical contractor's license;
(b) $100 for a master electrician's license; or
(c) Fifty (50) dollars for an electrician's license.
(2) Application fees shall not be refundable.
(3) License renewal fees shall be:
(a) $200 for an electrical contractor's license;
(b) $100 for a master electrician's license; or
(c) Fifty (50) dollars for an electrician's license.
(4) The reinstatement fee for any lapsed license pursuant to KRS 227A.100(4) shall be equal to the license renewal fee.
(5) The late renewal fee shall be fifty (50) dollars.
(6) Renewal fees for inactive licenses shall be one-half (1/2) the fee for an active license.

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a 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 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 did not issue electrical contractor's, master electrician's or electrician's licenses prior to June 24, 2003 if the business license indicates the applicant operated as an electrical contractor or worker;
(c) A sworn affidavit, on the affiliate'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; or
   3. An employer which employed the applicant as an electrician or a master electrician;
(d) 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. Examinations. (1) Applicants for an electrical contractor's license shall pass the "Kentucky Electrical Contractor Examination" developed and administered by the International Code Council [Exterior Business Law Electrical Examination No. IEC 110001] with a score of at least seventy (70) percent.
(2) Applicants for a master electrician's license shall pass the "Kentucky Master Electrician Examination" developed and administered by the International Code Council [Exterior Master Electrician Examination No. E204111] with a score of at least seventy (70) percent; and
(3) Applicants for an electrician's license shall pass the "Kentucky Electrician Examination" developed and administered by the International Code Council [Exterior Journeyman Electrician Examination No. E204111] with a score of at least seventy (70) percent.
(4) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examination developed and administered by the International Code Council. The person or group submitting the examination must demonstrate that the examination covers the same material and require the same level of knowledge as the International Code Council examinations.

Section 6. Appeal Procedure. (1) Applicants denied a license may appeal the decision to the Executive Director of the Office of Housing, Buildings and Construction [telephone: 502-564-2600]. 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 Executive Director of the Office of Housing, Buildings and Construction [Telephone: 502-564-2600].
(3) The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Executive Director [Telephone: 502-564-2600], who [which] may adopt it, amend it or substitute their [its] own decision based upon the evidence.

Section 7. 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. The applicant shall provide proof of workers' compensation insurance by providing:
(a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider; or
(b) 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 cancelled, terminated, or not renewed [nonrenewed]; or
(b) The policy limits are lowered.
(4) Electrical contractors shall 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.

Section 8. 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 renewal month shall be the month the license was issued.
(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 initial license [renewal fee to reflect the actual [added] term of the initial license. [The pro rata license renewal fee shall 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 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 license is inactive.

(2) An electrical contractor licensee 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 license as inactive while having an active electrical inspector certification.

(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 by Reference. (1) The following material is incorporated by reference:


(b) Form SFM-EC-3, “Master Electrician’s and Electrician’s License Application (March 2005 [June–2004] Edition),” Office of Housing, Buildings and Construction; and

(c) Form SFM-EC-4, “Reciprocity Electrical License Application (March 2005).

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 40601-5405, Monday through Friday, 8 a.m. to 4:30 p.m.

LAUANA WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 31, 2005 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005, 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 16, 2005 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 regulations. 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 May 31, 2005. 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, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, 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 procedures and requirements for the licensing of electrical contractors, electricians and master electricians under the provisions of KRS 227A.060.

(b) The necessity of this administrative regulation: This administrative regulation establishes the eligibility requirements and application procedures for the licensing of electrical contractors, electricians and master electricians for the issuance of licenses as established in KRS 227A.060.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets the standards and procedures that are to be followed in implementing KRS 227A.010–227A.140, for the licensing of electrical contractors, electricians and master electricians.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth the standards and procedures authorized by the statute to implement the requirements for licensing of electrical contractors, electricians and master electricians.

(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 correct the hearing procedure, add a section including reciprocity application, changes Experior testing to "a provider approved by the Board of Housing, Buildings and Construction, and clarifies the applications for electricians, master electricians and contractors.

(b) The necessity of the amendment to this administrative regulation: To correct the hearing procedures, allow other testing providers as approved by the Board of Housing, Buildings and Construction and clarify the applications.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 227A.040 requires the office to promulgate administrative regulations to create procedures governing the issuance of licenses to electrical contractors, master electricians and electricians.

(d) How this amendment will assist in the effective administration of the statues: The amendment clarifies the application and hearing process and provides the office more flexibility in approving testing providers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every business or individual currently holding or seeking to hold a license as a contractor, electrician or master electrician.

(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: Minimally, hearing procedures are clarified. New applicants will receive a clearer application. The office will have greater flexibility to approve testing providers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: None

(a) Initially: No cost to implement.

(b) On a continuing basis: No cost to implement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(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? Tiering was not used.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Certificate of Need
(AMENDMENT)


RELATES TO: KRS 216B.010–216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. EO 2004-726 reorganized the Cabinet for Health Services and the Cabinet for Families and Children and placed the Office of
Certificate of Need under the Cabinet for Health and Family Services. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning on the effective date of this administrative regulation [July 30, 2004 and ending June 30, 2005].

Section 1. (1) [Expenditure minimums or limits provided in KRS Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the period beginning on the effective date of this administrative regulation and ending June 30, 2006 to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census implicit price deflator for construction shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130 (these adjustments).

(3) The change in the deflator for the twelve (12) [eleven (11)] month period ending December 31, 2004 [June 30, 2006], represents (1.08) [1.04] percent increase.

Section 2. Beginning on the effective date of this administrative regulation:

(1) The capital expenditure minimum established in KRS 216B.015(7) shall be $2,177,666, and

(2) The major medical equipment minimum established in KRS 216B.015(16) shall be $2,177,666. [The expenditure minimums provided in KRS Chapter 216B shall be increased for the eleven (11) month period beginning July 30, 2004 and ending June 30, 2006 as follows:

(a) The expenditure minimum of $1,870,973 for capital expenditure shall be increased to $1,951,641.

(b) The expenditure minimum of $1,870,973 for major medical equipment shall be increased to $1,951,641].

JAMES W. HOLINSINGER, M.D., Secretary
DUANE KILTY JR., Ph.D., Undersecretary
JOHN H. GRAY, Executive Director
APPROVED BY AGENCY: March 21, 2005
FILED WITH LRC: March 22, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005, at 9 a.m. in the Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 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 up until the close of business May 31, 2005. 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: Jill Brown, Office of Legal Services, Cabinet for Health and Family Services, 275 East Main Street, 5 West, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John H. Gray
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides for the annual adjustment of expenditure minimums for capital expenditures and major medical equipment as required by KRS 216B.130.
(b) The necessity of this administrative regulation: The annual adjustment of expenditure minimums for capital expenditures and major medical equipment is mandated by KRS 216B.130.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.130 which requires the Cabinet for Health and Family Services to annually adjust certificate of need expenditure minimums.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the certificate of need statutes by complying with KRS 216B.130 which requires the Cabinet for Health and Family Services to annually adjust the certificate of need expenditure minimums.
(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: It will adjust expenditure minimums for the 12-month period from the effective date of the regulation to June 30, 2006.
(b) The necessity of the amendment to this administrative regulation: KRS 216B.130 requires the Cabinet for Health and Family Services to annually adjust expenditure minimums.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment complies with KRS 216B.130 which requires the Cabinet for Health and Family Services to annually adjust expenditure minimums.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by complying with KRS 216B.130 which requires the Cabinet for Health and Family Services to annually adjust expenditure minimums.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all individuals, businesses, organizations, and state and local governments seeking to apply for certificates of need. It is not yet known how many persons will actually apply for certificates of need.
(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 above groups will be impacted favorably by this administrative regulation which will increase certificate of need expenditure minimums, allowing providers to increase the expenditures that they may make without a certificate of need.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary as there is no cost to 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: No increase in fees or funding is 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 any fees and does not increase any fees either directly or indirectly.
(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.

FISCAL NOTE ON LOCAL GOVERNMENT

Contact: John Gray
1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes, this administrative regulation relates to licensed health service providers by local government, including but not limited to home health and ambulance services.
2. State whether this administrative regulation will affect the
local government or only a part or division of the local government. If local government provides licensed health care services, this administrative regulation will affect that part of local government that provides such services.

3. State the aspect or service of local government to which this administrative regulation relates. If local government provides licensed health care services, this administrative regulation will affect that part of local government that provides such services.

4. How does this administrative regulation affect the local government or any service it provides? By establishing the expenditure minimums or limits for capital expenditures and major medical equipment as provided in KRS Chapter 216B.

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Medicaid Services**

**Office of the Commissioner**

(Amendment)

907 KAR 1:018. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256b, 1396a-d


NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, 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 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 promulgate the law for the provision of medical assistance to Kentucky’s indigent citizenry. KRS 205.6316(4) requires the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees.

Section 1. Definitions. (1) “A-rated generic product” means a product that the FDA has found to be bioequivalent.

(2) “Average wholesale price” or “AWP” means the average wholesale price published in a nationally recognized comprehensive drug data file for which the department has contracted.

(3) “Department” means the Department for Medicaid Services or its designated agent.

(4) “Direct price” means the estimated acquisition cost for which a retailer can purchase a drug product directly from the manufacturer as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

(5) “Dispensing fee” means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(6) “Food and Drug Administration” or “FDA” means the Food and Drug Administration of the United States Department of Health and Human Services.

(7) “Gross amount due” means the total price of a drug claimed from all sources, which includes the ingredient cost paid and which may include the dispensing fee paid and or the incentive amount paid. [Nonsolid dosage form:] means a covered drug item other than an oral tablet, oral capsule, or inhaler.

(8) “Wholesale acquisition cost” or “WAC” means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) [Except-as-specified-in-subsection-4(e) of this section, reimbursement to a participating provider shall be comprised of dispensing-fee and the cost-of-the-drug product.] If a recipient is required to pay a copayment for a drug in accordance with 907 KAR 1:064, the reimbursement to the participating provider (for the dispensing fee) shall be reduced by one (1) dollar [the amount of the copayment].

(2) The department; [shall:]

(a) May establish a state maximum-allowable cost for a drug:
   1. If two (2) or more A-rated therapeutically-equivalent, multi-source, noninnovator drugs with a significant cost difference exist, for the given drug; and
   2. By reviewing the pricing sources AWP, WAC, and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted and utilizing the weighted majority of volume purchased; and
   (b) Shall maintain a current listing of drugs and their corresponding state maximum-allowable costs via a link from the department website located at the following address: http://www.chfs.ky.gov/dms.

(3) An appeal of a state maximum-allowable cost price for a drug shall be as follows:

(a) The provider shall email or fax a completed “MAC Price Inquiries and Research Request Form” which is available at the department and at the website address: http://kentucky.hsc.com/providers/documents.asp, by clicking on “MAC Price Inquiries and Research Request Form or via the specific website address:

   http://kentuckyhsc.com/Downloads/providers/KYRx_MACResearchRequestForm.pdf (to First Health Services Corporation. The email address is rebate@hsc.com and the fax number is 859-217-7581 or 859-217-7574.

(b) The provider shall contact the First Health Services Corporation technical call center at 1-800-432-7005 and provide information regarding the appeal including the national drug code for the drug in question;

(c) An appeal of a state maximum-allowable cost price for a drug shall be investigated and resolved within three (3) business days;

(d) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the state maximum-allowable cost price;

(e) The state maximum-allowable cost price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the state maximum-allowable cost price prescription in question.

(1) It is determined that no manufacturer exists in the price range referenced in subsection (3)(c) of this section; or

(2) The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider; and

(f) When the change in state maximum-allowable cost price for a price that is adjusted becomes effective, the provider shall be informed of the claim may be re billed for the price adjustment.

(1) For which a federal upper limit does not exist; and

(2) For which at least one (1) readily and nationally available A-rated generic product exists;

(g) Determines a state maximum-allowable cost for a drug by identifying the lowest price for a drug regardless of manufacturer, including both generic and brand names, and multiplying that price by 150 percent. The lowest price for a drug shall be:

1. Identified in a nationally-recognized comprehensive drug data file for which the department has contracted; and

2. Determined by reviewing the pricing sources determinations of AWP, WAC, and direct price for the drug;

(h) Remove a state maximum-allowable cost for a drug if a federal upper limit becomes available for the drug; and

(i) Maintain a current listing of drugs and their corresponding state maximum-allowable costs at the department website located at the following address: http://chfs.ky.gov/dms.

(3) A provider may submit drug acquisition cost or product availability information to the department. Upon receipt of accurate documentation (including recent drug purchase summaries, invoices, or remittance advices) from the provider, the department:

(a) Shall review the referenced product and its corresponding state maximum-allowable cost value to ensure it reflects an accurate market price and availability; and
(b) May consider adjusting or removing the state maximum-allowable cost for the drug if the department determines that the state maximum-allowable cost does not accurately reflect current market price or conditions.

(4) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List (Formulary) established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements established in this subsection.

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorized exemption from the rebate requirement in accordance with 907 KAR 1:019.

(b) Drug costs shall be determined in the Pharmacy Program using drug pricing and costing information obtained from a nationally recognized comprehensive drug data file for which the department has contracted with pricing based on the actual package size utilized.

(c) Reimbursement for a drug shall be the lesser of:
   1. The federal upper limit, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;
   2. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;
   3. The estimated acquisition cost (EAC) which shall:
      a. For a generic drug equal the AWP minus fourteen (14) percent, plus a dispensing fee and, if applicable, a unit dose addition; and
      b. For a brand name drug equal the AWP minus fifteen (15) percent, plus a dispensing fee and, if applicable, a unit dose addition;
   4. The usual and customary billed charge; or
   5. The gross amount due.

(d) Reimbursement for the dispensing of an emergency supply of a drug shall be:
   1. Made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4; and
   2. The lesser of:
      a. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition;
      b. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition;
      c. The estimated acquisition cost (EAC) which shall:
         i. For a generic drug equal the AWP minus fourteen (14) percent, plus a dispensing fee and, if applicable, a unit dose addition; and
         ii. For a brand name drug, equal the AWP minus fifteen (15) percent, plus a dispensing fee and, if applicable, a unit dose addition; or
      d. The usual and customary billed charge; or
      e. The gross amount due [Except as provided in paragraphs (d) and (e) of this subsection, reimbursement for a drug shall be the lesser of:
         1. The federal upper limit plus a dispensing fee and unit dose add-on as appropriate;
         2. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate if a federal upper limit is unavailable;
         3. The estimated acquisition cost (EAC) which equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or
         4. The usual and customary billed charge.
      (d) Except as provided in paragraph (e) of this subsection, if a prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement shall be the lesser of:
         1. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or
         2. The usual and customary billed charge.
      (e) 1. Reimbursement for the dispensing of an emergency supply of a drug shall be made only outside normal business hours of the department's drug prior authorization office and as permitted in accordance with 907 KAR 1:019, Section 4.
      2. Except as specified in subparagraph 3. of this paragraph, reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:
         a. The federal upper limit plus the dispensing fee for the prescription and, if applicable, a unit dose add-on;
         b. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate;
         c. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or
         d. The usual and customary billed charge.
      3. A prescriber has met the requirements specified in 907 KAR 1:019 for obtaining a brand name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 907 KAR 1:019, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:
         a. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on; or
         b. The usual and customary billed charge.

(e) [4.] If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill [reimbursement shall not include a dispensing fee].

(f) Reimbursement shall be denied if:
   1. The recipient is ineligible on the date of service;
   2. The drug is excused from coverage in accordance with 907 KAR 1:019, Section 3; or
   3. Prior authorization is required by the department and has been denied or has not been requested.

(g) For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 907 KAR 1:022, the drug shall not be more than one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day period unless:
   1. The drug is a Schedule II, III, or IV controlled substance or a legend intravenous drug, in which case up to three (3) additional dispensing fees shall be allowed;
   2. The drug is a nonsolid dosage form, in which case one (1) additional dispensing fee shall be allowed;
   3. The prescribed dosage has been changed, in which case one (1) additional dispensing fee shall be allowed; or
   4. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee.

(i) One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid program as a maintenance drug unless the prescribed dosage has been changed;
   2. Except as specified in subparagraphs 1 and 3 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and
   3. Four (4) dispensing fees per drug within a calendar month for a nonsolid dosage form a Schedule II, III, or IV controlled substance or a legend intravenous drug.

(b) For a nursing facility resident meeting Medicaid nursing facility level of care criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(ii) A maintenance drug shall be dispensed to an outpatient service recipient, except for an individual receiving supports for community living services, up to a ninety-two (92) day supply with only one (1) initial dispensing fee and one (1) refill dispensing fee.
Health Service Discount Program in accordance with 42 U.S.C. 256b shall bill the department the pharmacy's actual acquisition cost for a drug; and
(b) The department shall reimburse the pharmacy's actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.
(14) If a covered entity as defined in 42 U.S.C. 256b notifies the United States Office of Pharmacy Affairs that its pharmacy is not included under 42 U.S.C. 256b:
(a) The pharmacy shall submit [bill] its usual and customary amount and gross amount due for a drug and
(b) The department shall reimburse the pharmacy in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

Section 3. Dispensing Fees. (1) To determine a dispensing fee, the department shall comply with KRS 205.561.
(2) Except as provided in subsection (3) of this section and in accordance with KRS 205.561, [based on the conclusion of the dispensing fee study of the report conducted in accordance with KRS 205.561,] the dispensing fee, unless excluded by Section 2(4)(e) of this administrative regulation, shall be:
(a) Five (5) dollars [four (4) dollars and fifty-one (51) cents] per prescription for a generic drug reimbursed through the Outpatient Drug Program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, and
(b) Four (4) dollars and fifty (50) cents per prescription for a brand name drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022.
(3)(a) For a recipient in a nursing facility meeting the nursing facility level of care criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual reimbursement shall be made for a drug dispensed through the Pharmacy Outpatient Drug Program in the amount of two (2) cents per unit dose for a nonunit dose drug packaged in unit dose form by the pharmacist:
1. Two (2) cents per unit dose for a unit dose-drug packaged in unit dose form by the manufacturer and
2. Four (4) cents per unit dose for a unit dose-drug packaged in unit dose form by the pharmacist.
(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars for a generic drug or four (4) dollars and fifty (50) cents for a brand name drug [four (4) dollars and fifty-one (51) cents] is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(e) of this administrative regulation.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:
(1) As the lesser of:
(a) The maximum-allowable cost or estimated acquisition cost established in Section 2(4)(e) of this administrative regulation; or
(b) The physician's usual and customary amount or gross amount due [charge to the general public for the drug];
(c) The federal upper limit.
(2) In accordance with 907 KAR 3:010 for a free immunization through the Vaccines for Children Program.

(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.
APPROVED BY AGENCY: March 14, 2005
FILED WITH LRC: March 30, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 23, 2005, 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 16, 2005, 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 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 regarding this proposed administrative regulation until close of business May 31, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7005, fax (502) 564-7753.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining reimbursement for drugs through the Medicaid 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 method for determining reimbursement for drugs through the Medicaid outpatient pharmacy program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists and will continue to assist in the effective administration of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid 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 includes establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; altering drug reimbursement to AWP minus 14% for generic drugs, and AWP minus 15% for brand name drugs; altering the dispensing fee from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; revising the unit dose drug packaging payment to $0.02 per unit dose for multisource drug repackaged in unit dose form by a pharmacist; allowing one dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient, except for a supports for community living service recipient, that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to control rising pharmacy reimbursement costs in the Medicaid program in order to maintain the financial viability of the Department for Medicaid Services. This amendment would bring Medicaid more in line with other state Medicaid plans as well as the commercial sector.

(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 state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; altering drug reimbursement to AWP minus 14% for generic drugs, and AWP minus 15% for brand name drugs; altering the dispensing fee from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient, except for a supports for community living service recipient, that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing a state maximum-allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; altering drug reimbursement to AWP minus 14% for generic drugs, and AWP minus 15% for brand name drugs; altering the dispensing fee from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient, except for a supports for community living service recipient, that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period; establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers and drug manufacturers 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: Pharmaceutical providers or manufacturers shall be affected in that drug reimbursement will change to average wholesale price (AWP) minus 14% for generic drugs and AWP minus 15% for brand name drugs, that a state maximum-allowable cost may be established for any drug for which 2 or more multisource drugs with a significant cost difference exist; in that the dispensing fee is being altered from $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

- 1914 -
service recipient per drug except for certain circumstances and clarifies that over-the-counter drugs dispensed to nursing facility service recipients shall not be reimbursed via the Medicaid outpatient pharmacy program, but rather shall be considered part of nursing facility reimbursement.

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

(a) Initially: DMS estimates that the amendment to this administrative regulation could reduce expenditures as much as $31.5 million annually ($21.98 million federal funds; $9.52 million state funds) for the current fiscal year.

(b) On a continuing basis: DMS estimates that the amendment to this administrative regulation could reduce expenditures by at least as much as $31.5 million annually ($21.98 million federal funds; $9.52 million state funds) plus additional as yet undetermined amounts depending upon generic drug dispensing/utilization.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund 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: Neither an increase in fees nor 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 neither establishes nor increases any fees.

(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. This administrative regulation complies with federal statutes/regulations governing the Medicaid Program and drug reimbursement.

2. State compliance standards. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation establishes the Department for Medicaid Services reimbursement for drugs in compliance with federal regulations governing drug reimbursement.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter (than federal) requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter (than federal) requirements.
OFFICE OF THE ATTORNEY GENERAL
Consumer Protection Division
(New Administrative Regulation)


STATUTORY AUTHORITY: 2005 Ky. Acts ch. 38, secs. 2(5) and 3.
NECESSITY, FUNCTION AND CONFORMITY: 2005 Ky. Acts ch. 38, sec. 3 requires the Attorney General to promulgate admin-
istrative regulations necessary to carry out the provisions of KRS Chapter 380, relating to debt adjusting. 2005 Ky. Acts ch. 38, sec.
2(5) requires a registration form. This administrative regulation establishes the registration and renewal process and incorporates by
reference the forms to be utilized by persons subject to registration.

Section 1. Definitions. (1) "Division" means the Office of the
Attorney General, Consumer Protection Division.
(2) "Registrant" means a person filing the registration form
required by 2005 Ky. Acts ch. 38, sec. 2(5) and this administrative regulation.
(3) "Registration form" means the "Commonwealth of Kentucky
Debt Adjuster Registration Statement".

Section 2. Registration. (1) The initial registration, or a renewal of
registration, for a person engaging in debt adjusting pursuant to
KRS Chapter 380, shall be made on the "Commonwealth of Ken-
tucky Debt Adjuster Registration Statement". Each person engaging
in debt adjusting shall register by:
(a) Completing the information required by the registration form
and submitting the required information identifying the registrant's
business structure including articles of incorporation or organiza-
tion, partnership or joint venture agreements, evidence of registra-
tion or qualification to do business in the Commonwealth of Ken-
tucky, a copy of the insurance policy, and additional information, if
required, regarding a conviction, regulatory action or litigation in
connection with a consumer credit or debt adjustment business, and
a sample contract of registrant's services.
(b) Filing the original of the registration form and accompanying
documentation with the Office of the Attorney General, Con-
sumer Protection Division, 1024 Capital Center Drive, Suite 200,
Frankfort, Kentucky 40601; and
(c) Paying the fee required by 2005 Ky. Acts ch. 38, sec. 2(5).
(2) Registration shall be valid for one (1) year from the date of
approval of registration by the Division, and may be renewed annu-
ally by making the required filing and paying the renewal fee.
(3) Deadline for filing.
(a) The initial registration form and fee shall be filed with the
division prior to the date the registrant will engage in debt adjusting
pursuant to KRS Chapter 380.
(b) The renewal registration form and fee shall be filed with the
division at least four (4) weeks prior to the expiration of the regis-
tration.
(c) The registration form shall be considered filed as of the
date it is:
1. Delivered to the Division; or
2. Deposited in the mail or with a commercial postal service on
or before the due date, as indicated by the postmark applied by the
U.S. Postal Service or official mark applied by a commercial postal
service. The mark made by a privately-held postage meter shall
not be considered in determining the date of filing.
(4) A registration may be withdrawn by the registrant prior to
approval by submitting a written request that the registration form
be withdrawn.
(5)(a) If the Division determines that the registration form or the
materials submitted with the registration form do not contain all
information required by KRS Chapter 380 or this administrative
regulation, the division shall notify the registrant in writing, specify-
ing the information that was not completed in the registration form.
(b) The registration shall not be effective or approved until an
amended registration form is filed with the division that contains all
information required by KRS Chapter 380 and this administrative
regulation.
(c) The division shall provide a written confirmation of approval
of registration.

Section 3. A person shall not engage in debt adjusting prior to
the timely filing of a complete and accurate registration which has
been approved by the division.

Section 4. Annual Audit. (1) The annual audit required by 2005
Ky. Acts ch. 38, sec. 2(6) shall include an audit of:
(a) The registrant’s financial statements and records;
2(1)(b);
(c) The registrant’s compliance with the requirements of KRS
Chapter 380; and
(d) The registrant’s compliance with the requirements of this
administrative regulation.
(2) The Commonwealth of Kentucky Debt Adjuster Audit
Checklist, Form DA-2 (4/2005), shall be used for purposes of the
annual audit and filed with the results of the annual audit.
(3) The results of the audit and the auditor’s opinion filed with
the division shall be accompanied by a certification from each indi-
vidual auditor joining in the opinion. The certification shall include:
(a) The auditor is an independent, third-party certified public
accountant;
(b) The states in which the auditor is licensed as a certified
public accountant; and
(c) The identification number for each license.
(4) The results of the audit and the auditor’s opinion, and the
certification by each auditor, shall be filed with each renewal registra-
tion form, and shall be no older than twelve (12) months prior to
the date of filing of the renewal registration form.

Section 5. The trust accounts required by 2005 Ky. Acts ch. 38,
sec. 2(1)(b) shall be maintained in a federally insured financial
institution.

Section 6. (1) A person engaged in debt adjusting shall notify
the division within five (5) business days of any change in, or
cancellation of, or receipt of notice of cancellation of, the insurance
(2) Except as required by Section 6(1) of this administrative
regulation, within thirty (30) days of any material change in the
information provided on or submitted with the registration form a
registrant shall notify the division of such change and submit an
updated registration form. The annual renewal date for the regis-
trant shall not be affected by the filing required by this section.

Section 7. Incorporation by Reference. (1) The following mate-
rial is incorporated by reference:
(a) The "Commonwealth of Kentucky Debt Adjuster Registra-
tion Statement", Form DA-1 (4/2005); and
(b) The "Commonwealth of Kentucky Debt Adjuster Audit
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Office of the Attorney Gen-
eral, Consumer Protection Division, 1024 Capital Center Drive,
Suite 200, Frankfort Kentucky 40601, Monday through Friday, 8
a.m. to 4:30 p.m.

GREGORY D. STUMBO, Attorney General
APPROVED BY AGENCY: April 15, 2005
FILED WITH LRC: April 15, 2005 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
May 25, 2005 at 10 a.m. at Office of the Attorney General, Con-
sumer Protection Division, 1024 Capital Center Drive, Suite 200,
Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 5 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 May 31, 2005. 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 R. Winstead, Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, 1024 Capitol Center Drive, Suite 200, Frankfort, Kentucky 40601, phone (502) 896-5369, fax (502) 573-8317.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Kevin R. Winstead
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the registration process and certain requirements for the trust accounts, annual audit and insurance coverage applicable to debt adjusters pursuant to HB 294 (2005 Ky. Acts ch. 38), and incorporates a registration form and an audit checklist to be utilized by persons subject to this administrative regulation.
(b) The necessity of this administrative regulation: This regulation is necessary for the efficient and uniform application of the requirements of HB 294, which requires the Attorney General to promulgate rules to establish regulations to ensure the proper administration and enforcement of KRS Chapter 380.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 380, as amended and enacted by HB 294, imposes certain requirements, including registration (2005 Ky. Acts ch. 38, sec. 2(5)), trust accounts (2005 Ky. Acts ch. 38, sec. 2(1)(b)), fee limits (2005 Ky. Acts ch. 38, sec. 2(2)), annual audits (2005 Ky. Acts ch. 38, sec. 2(6)) and insurance coverage (2005 Ky. Acts ch. 38, sec. 2(7)), for debt adjusters. This administrative regulation establishes the registration process and certain requirements for the trust accounts, annual audit and insurance coverage applicable to debt adjusters, and incorporates a registration form and an audit checklist to be utilized by persons subject to this administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS Chapter 380, amended and enacted by HB 294, by establishing the registration process and certain requirements for the trust accounts, annual audit and insurance coverage applicable to debt adjusters, and incorporating a registration form and an audit checklist to be utilized by persons subject to this administrative regulation.
(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 content 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 individuals, partnerships, associations, corporations, limited liability companies, trusts and certain other entities engaged in debt adjusting, for the benefit of members of the public. Based on information available from other states, it is estimated that approximately 10-50 persons engaged in debt adjusting will be affected by this administrative regulation, but the number is unknown because debt adjusters have not previously been allowed to register in the Commonwealth 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: The enactment of HB 294 permits a person to engage in debt adjusting subject to certain requirements. This administrative regulation will impact debt adjusters by establishing the registration process and certain requirements for trust accounts, annual audit and insurance coverage, and incorporating a registration form and an audit checklist to be utilized by persons subject to this 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
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund appropriations and agency receipts.
(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: None expected at this time.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No, the administrative regulation does not create any fees. HB 294 provides for a fee of $250 to register as debt adjuster.
(9) TIERING: Tiering is not applied in this administrative regulation because the statutes apply uniformly to any person that engages in debt adjusting.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(Repealer)


RELATES TO: KRS 64.140
STATUTORY AUTHORITY KRS 64.140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 64.140 provides for advancements to sheriffs to defray official expenses. KRS 42.0201 authorizes the state controller to maintain responsibility for the state government’s duties and functions relating to the county fee system for local entities. Following the reorganization of the Finance and Administration Cabinet, a new Chapter 38 of Title 200 has been created for the Office of the Controller, under which the Division of Local Government Services falls. A new regulation, 200 KAR 38:050 is being prorogated to replace and update the administrative regulations hereby repealed, which were promulgated under the former Department for Local Government.

Section 1. The following administrative regulations are hereby repealed:
(1) 109 KAR 12:010. General criteria;
(2) 109 KAR 12:020. Application form; information required;
(3) 109 KAR 12:030. Initial advancement; procedure;
(4) 109 KAR 12:040. Subsequent advancements; and

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: January 14, 2005
FILED WITH LRC: March 31, 2005 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 25, 2005, at 10 a.m. in Room 396 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by May 18, 2005, 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 May 31, 2005. 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, and Kristen Webb, Legislative Director, Finance and Administration Cabinet, Room 484 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:
(b) The necessity of this administrative regulation: This regulation is needed in order to repeal these administrative regulations which will be repromulgated under the correct chapter of the Kentucky Administrative Regulations due to reorganization of the Finance and Administration Cabinet.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 42.0201 authorizes the state controller to maintain responsibility for the state government's duties and functions relating to the county fee system for local entities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment repeals administrative regulations that are in the incorrect chapter of the KAR following reorganization of the Finance and Administration Cabinet.

(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 content 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 will affect the Finance and Administration Cabinet and county sheriffs.

(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 repealer will have little or no impact on the current practices of the above groups.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No funding necessary.

(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 administrative regulation merely repeals administrative regulations which will be re-promulgated in another chapter of the KAR.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(New Administrative Regulation)

200 KAR 38:050. Advancements to sheriffs.

RELATES TO: KRS 64.140
STATUTORY AUTHORITY: KRS 64.140(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 64.140 provides for advancements to county sheriffs to defray official expenses. This administrative regulation provides for advancement to sheriffs of counties with a population of less than 70,000.

Section 1. Definitions. (1) "Branch" means the County Fee Systems Branch.
(2) "Cabinet" means the Finance and Administration Cabinet.
(3) "Secretary" means the secretary of the Finance and Administration Cabinet.

Section 2. Application. Sheriffs of counties containing a population of less than 70,000 may make application to the State Treasurer to be advanced monies to operate their offices during those periods of the year when the fees of the office are inadequate to provide for operational expenses. Application shall be in the form of a letter addressed to the Finance and Administration Cabinet, Office of the Controller, Division of Local Government Services, County Fee Systems Branch, signed by the sheriff, and notarized by a notary public in and for the Commonwealth of Kentucky. The application shall state:
(1) The fees received by the sheriff are insufficient to provide the necessary funds for the operation of the office;
(2) The sheriff desires to receive an advancement of funds from the State Treasury to defray office expenses;
(3) The sheriff agrees to comply with this administrative regulation; and
(4) The documents filed with the application are true and correct statements of fact.

Section 3. Accompanying Documents. The following documents shall accompany a letter of application:
(1) A copy of the sheriff's settlement with the fiscal court of the sheriff's county for the year immediately preceding the year in which application for an advancement is made, certified as true and correct by the county court clerk. If the sheriff's settlement with the fiscal court has not been filed, the sheriff may substitute an affidavit setting out the actual fees of the office for the immediate preceding year.
(2) A copy of the last quietus from the state, certified by an authorized representative of the Finance and Administration Cabinet, Department of Revenue.
(3) A detailed budget for the sheriff's office, approved by fiscal court, for the year in which the advancement is to be made. The budget statement shall contain detailed breakdowns of monthly expenditures and receipts.
(4) A detailed statement, approved by fiscal court, of the amount to be advanced in each month.
(5) An affidavit setting out receipts for the year up to and including the last day of the previous month and actual expenses to the last day of the month in which application is made, if the sheriff first requests an advance in a month other than January.
(6) A bond in favor of the commonwealth for an amount not to exceed the total advance requested for the year. The bond shall be:
(a) Issued by a surety company authorized to do business in the Commonwealth of Kentucky;
(b) Conditioned upon the full repayment by the sheriff of all monies advanced by the commonwealth;
(c) In addition to any other bonds required by statute;
(d) Approved by the fiscal court; and
(e) Prepared in duplicate, with the original to be filed with the branch and a copy with the county court clerk of the sheriff's county.
(7) Any other document, report, or information deemed neces-
sary by the cabinet to enable it to adequately evaluate the advisability of making advancement.

Section 4. Initial Advancement: Procedure. Upon receipt of an application for advancement to a sheriff, the branch manager shall examine the application for compliance with this administrative regulation. If the request and supporting documents are found to be in proper order, the branch manager shall recommend to the secretary that an advance be made and a suggested amount. The branch manager shall be guided by the following considerations in making a recommendation:

(1) If the first advance is requested for the month of January, the branch manager shall recommend that the cabinet issue a warrant for the lesser of:
   (a) The sheriff's request; or
   (b) The estimated expenditures minus receipts for the month of January as set out in the sheriff's budget; except that the monthly advance shall not exceed the lesser of $50,000 or one-twelfth (1/12) of the sheriff’s receipts for the previous year.

(2) If the first advance is for a month other than January, the branch manager shall add the expenses of the sheriff for the months of the year preceding the application as set out in the affidavit to the estimated expenses for the month in which the advance is requested, subtract the receipts of the office, and recommend that a warrant be issued for the lesser of:
   (a) The figure representing the difference between the sum of the actual expenses and the estimated expenses for the month of the advance and the receipts of the office; or
   (b) The amount requested; except that the recommendation shall not exceed $50,000 or one-twelfth (1/12) of the sheriff’s receipts of the previous year, whichever is the lesser.

Section 5. Subsequent Advancements. (1) After receiving an initial advancement, a sheriff may receive subsequent advancements upon filing with the cabinet a request for advancement accompanied by an affidavit setting out the receipts and expenditures of the sheriff’s office through the previous month.

(2) Upon receipt of a request for a subsequent advancement, the branch shall add the actual expenditures to date to the estimated expenditures for the current month, subtract the actual receipts of the office, and cause a warrant to be issued for the lesser of:
   (a) The difference; or
   (b) The amount requested; except that the warrant shall not exceed the lesser of $50,000 or one-twelfth (1/12) of the sheriff’s receipts for the previous year.

Section 6. Refund Procedure. (1) A sheriff who has received an advancement of funds shall, on or before the tenth day of November, December, and January, file with the cabinet an affidavit stating the actual receipts and expenditures of the office for the preceding month. The affidavit shall be accompanied by a check made payable to the Treasurer of the Commonwealth of Kentucky in the amount that the receipts exceed the expenditures for the previous month; except that the total amount of money payable to the commonwealth shall not exceed the total of the advancements made to the sheriff during the preceding year.

(2) If the payment submitted as provided in Section 6(1) of this administrative regulation is less than the amount advanced to the sheriff during the preceding year, the sheriff shall, on or before January 15 of the year following the year in which the advancements are made, forward a check made payable to the Treasurer of the Commonwealth of Kentucky in the amount of the unpaid balance.

(3) No advancement shall be made to a sheriff unless the total amount advanced in the previous year has been repaid to the commonwealth.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: January 15, 2005
FILED WITH LRC: March 31, 2005 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on May 25, 2005, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by May 18, 2005, 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 May 18, 2005. 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, and Kristen Webb, Legislative Director, Finance and Administration Cabinet, Room 484 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: This administrative regulation repromulgates an administrative regulation previously promulgated under the Governor’s Office for Local Development under the Office of the Controller that provides for advancements to sheriffs of counties with a population of less than 70,000 to defray official office expenses.
   (b) The necessity of this administrative regulation: KRS 42.0201 authorizes the State Controller to promulgate administrative regulations relating to accounting policies and procedures, and to provide record keeping. The Finance and Administration is responsible for advancements to sheriffs pursuant to KRS 64.140 and this regulation repromulgates the regulation under the Office of the State Controller.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies how the Finance and Administration Cabinet will implement the advancement procedures.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation specifies the requirements to be followed by a sheriff requesting advancements for the purpose of defraying necessary official expenses.

(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 content 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 will apply to the Finance and Administration Cabinet and county sheriffs.

(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 should be no additional impact on the cabinet or the county sheriffs.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No additional administrative costs will be required.
   (b) On a continuing basis: No additional administrative costs will be required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No additional funding will be required to continue the advancement program for sheriffs.

(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.

(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.

VOLUME 31, NUMBER 11 – May 1, 2005

GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(New Administrative Regulation)

201 KAR 18:072. Experience.

RELATES TO: KRS 322.040
STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.290(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040 provides that the board shall promulgate administrative regulations to establish requirements for consideration of experience gained prior to graduation from programs as described in the statute. This administrative regulation establishes these requirements.

Section 1. Evaluation of experience in engineering required under KRS 322.040 shall consider the following:

(1) Experience shall reflect increasing complexity of the engineering tasks and the progressive responsibility of the applicant.

(2) The applicant shall demonstrate knowledge of engineering mathematics, physical and applied sciences, properties of materials, the fundamental principles of engineering design and the application of engineering principles in the solution of engineering problems.

(3) A maximum of six (6) months of credit may be approved for experience gained prior to graduation under KRS 322.040, Section 1(1)(a)(1). One (1) year of credit may be approved for completion of a master’s degree in engineering in an EAC/ABET-accredited program, or one deemed equivalent by the board. Credit shall not be granted for both experiences set out in this subsection.

(4) Experience that violates KRS Chapter 322 shall not be approved.

(5) Engineering experience gained in the military services may be approved.

(6) Sales experience may be approved if engineering principles were required and used in that experience.

(7) Experience gained in teaching advanced-level engineering-related courses in a four (4) year EAC/ABET-accredited program, or one (1) deemed equivalent by the board, may be approved.

(8) Experience gained in engineering research and design projects by faculty in an EAC/ABET-accredited program, or one deemed equivalent by the board, may be approved.

(9) Experience may be approved for execution or supervision of construction projects designed by a professional engineer.

(10) The applicant shall demonstrate why experience not gained under the supervision of a professional engineer is eligible for credit.

(11) Qualifying experience shall be complete at the time of application for licensure.

Section 2. Evaluation of experience in land surveying required under KRS 322.040 shall consider the following:

(1) A maximum of two (2) years of experience will be approved for land surveying work prior to graduation under KRS 322.040 Section 2(1)(c)1, 2, 3 and Section 3(1)(a)1 and 2.

(5) Experience that violates KRS Chapter 322 shall not be approved.

(6) Land surveying experience gained in the military services may be approved.

(7) A maximum of two (2) years of experience may be approved for teaching land surveying courses at the postsecondary level.

(8) Qualifying experience shall be complete at the time of application.

(9) Notwithstanding paragraphs (3), (4), and (7), in no case shall an applicant’s experience gained after graduation be less than two (2) years.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: March 29, 2005
FILED WITH LRC: March 30, 2005 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005 at 9 a.m. at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 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 May 31, 2005. 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: Donna G. Dutton, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (800) 573-2680, fax (502) 573-6867.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna G. Dutton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This is a new administrative regulation. It will establish requirements for consideration of experience gained prior to graduation from programs as described in KRS 322.040.

(b) The necessity of this administrative regulation: KRS 322.040 provides that the board shall promulgate administrative regulations to establish requirements for consideration of experience gained prior to graduation from programs described in the statute. This administrative regulation establishes these requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290 provides that the board shall promulgate administrative regulations that are consistent with the laws of the state and reasonably necessary for the proper performance of its duties. This regulation is in conformance with KRS 322.040 which requires that the board establish requirements for consideration of experience gained prior to graduation from programs described in the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment will be consistent with KRS 322.040 and HB 73.

(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 content 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: All persons who apply for an engineer or land surveyor’s license in Kentucky 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: This administrative regulation clearly defines the “experience” requirement in the statute which engineers and land surveyors are required to have prior to being licensed.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No additional cost. It will be part of the current licensing program.
   (b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board restricted funds.

(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 affect any fees.

(9) TIERING: Is tiering applied? No, all applicants for land surveying and engineering will be treated the same.

GENERAL GOVERNMENT
Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
(No New Administrative Regulation)


RELATES TO: KRS 322.010, 322.040, 322.120, 322.290(4)
STATUTORY AUTHORITY: KRS 322.040, 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040 provides that the board shall promulgate administrative regulations to establish requirements for the surveying core curriculum as described in Section 2(1)(c)2 and 3. This administrative regulation establishes these requirements.

Section 1. The core curriculum in land surveying and related areas referred to in KRS 322.040, Section 2(1)(c)2 shall consist of twenty-four (24) semester credit hours from a board-approved college or university as follows:

(1) A minimum of twelve (12) semester credit hours in at least three (3) of the following subject areas: Principles of Surveying, Professional Ethics and Conduct, Computer Graphics related to land surveying, Geographic Information Systems, Route Surveying, Land Boundary Location, and Boundary Law.

(2) The remainder of the twenty-four (24) semester credit hours shall come from the following subject areas: Automated Surveying and Mapping, Geodetic Surveying, Hydrographic Surveying, Photogrammetry, Subdivision and Land Use Planning, Advanced Surveying Measurement, Construction Surveying, Public Land Systems, Remote Sensing Applications, and Mine Surveying.

Section 2. The twelve (12) semester credit hours of the core curriculum in land surveying referred to in KRS 322.040, Section 2(1)(c)3 shall consist of the twelve (12) hours described in subsection (1) above.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: March 29, 2005
FILED WITH LRC: March 30, 2005 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 23, 2005 at 9 a.m. at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 2005, 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 May 31, 2005. 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: Donna G. Dutton, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, (800) 573-2680, fax (502) 573-6687.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna G. Dutton

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This is a new administrative regulation. It will define the core curriculum as referred to in KRS 322.040(2).
   (b) The necessity of this administrative regulation: KRS 322.040 provides that the board shall promulgate administrative regulations to establish requirements for the surveying core curriculum as described in Section 2 of the statute. This administrative regulation establishes these requirements.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 322.290 provides that the board shall promulgate administrative regulations that are consistent with the laws of the state and reasonably necessary for the proper performance of its duties. This regulation is necessary to be in conformance with HB 73 which amends KRS 322.040 and requires the board to establish requirements for the surveying core curriculum.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will be consistent with KRS 322.040 and HB 73.

(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 content 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: All persons who apply for a land surveyor’s license in Kentucky 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: This administrative regulation defines core curriculum for land surveyors which is described in Section 2, subsection (1)(c)2, and 3.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: No additional cost.
   (b) On a continuing basis: No additional cost.
   (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board restricted funds.
   (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 in fees or funding will be necessary to implement.
   (e) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This administrative regulation does not affect fees.

(9) TIERING: Is tiering applied? No, all applicants for land surveying licenses will be treated the same.
The April meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, April 12, 2005, at 10:00 a.m., in Room 149 of the Capitol Annex. Committee Staff Administrator Dave Nicholas called the meeting to order, and the roll call was taken. After Co-Chairs Senator Richard Roeding and Representative Tanya Pullin were nominated and elected, Representative Tanya Pullin assumed control of the meeting. The minutes of the March 9 meeting were approved.

Present were:

Members: Representative Tanya Pullin, Co-Chair; Senator Richard Roeding, Co-Chair; Senators Joey Pendleton, Gary Tapp, and Alice Kerr; Representatives Jimmie Lee, James Bruce, and Jon David Reinhardt.

LRC Staff: Dave Nicholas, Emily Caudill, Donna Little, Laura Milam, Karen Howard, Sarah Amburgey, Jenifer Harrison, Emily Hartm.Errick, and Ellen Loring.

Guests: James J. Grawe, Peggy Sharon, Board of Accountancy; James J. Grawe, Larry Brandstetter, Jill Smith, Board of Architects; Jon Gassett, Scott Porter, Department of Fish and Wildlife Resources; Amy Barker, Trena C. Rogers, Jim Wagner, Kelly White, Department of Corrections; Natalie Lewellen, Darin K. Moore, Lt. Adam Whitlock, Department of State Police; Kevin Noland, Board of Education; Fred Huggins, David Stumbo, Department of Labor; Bobby Waits, Kentucky Jailers.

The Administrative Regulation Review Subcommittee met on Tuesday 12, 2005, and submits this report:

Other Business:

Subcommittee staff stated that pursuant to KRS 13A.020(1), the reappointing authorities had reappointed all members of the Subcommittee to serve another two (2) years. The Subcommittee's first order of business was the election of Co-Chairs.

Representative Bruce made a motion, seconded by Representative Lee and Representative Reinhardt, to nominate Representative Pullin as the House Subcommittee Co-Chair. Representative Lee made a motion, seconded by Representative Reinhardt, to cease nominations. By acclamation, it was so ordered that Representative Pullin was the House Subcommittee Co-Chair. Senator Tapp made a motion, seconded by Senator Pendleton, to nominate Senator Roeding as the Senate Subcommittee Co-Chair. Senator Tapp made a motion, seconded by Senator Pendleton, to cease nominations. By acclamation, it was so ordered that Senator Roeding was the Senate Subcommittee Co-Chair.

Administrative Regulations Reviewed by the Subcommittee:

General Government Cabinet: Boards and Commissions: State Board of Accountancy
201 KAR 1:050. License Application. Jim Grawe, Assistant Attorney General, represented the Board.
201 KAR 1:063. Certificate of experience. A motion was made and seconded to approve the following amendments: to amend Section 1 to correct a minor drafting error. Without objection, and with agreement of the agency, the amendments were approved.
201 KAR 1:170. Application to receive a privilege to practice under substantial equivalency standards.
201 KAR 1:190. Computer-based examination sections, applications, and procedures. A motion was made and seconded to approve the following amendments: to amend Sections 5 and 9 to correct internal references. Without objection, and with agreement of the agency, the amendments were approved.

Board of Architects
201 KAR 19:035. Qualifications for examination and licensure. Jim Grawe, Assistant Attorney General, and Jill Smith, President, represented the Board.

In response to questions by Co-Chair Roeding, Ms. Smith stated that the Board amended this administrative regulation to permit applicants to begin the national examination process after one (1) year of experience rather than three (3) years as were previously required. With this change, the Kentucky Board of Architects would be more competitive with other states. An applicant could obtain up to one year of experience as a student. The amendments did not affect the other licensure requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 5 to correct minor drafting errors. Without objection, and with agreement of the agency, the amendments were approved.

Commerce Cabinet: Department of Fish and Wildlife Resources: Game

In response to a question by Co-Chair Pullin, Mr. Gassett stated that Jenny Wiley State Resort Park offered weekend elk sightseeing tour packages during the last half of the year.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, 4, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:140. Requirements for wild turkey hunting. In response to questions by Representative Reinhardt, Mr. Gassett stated that this administrative regulation prohibited the use of electronic calling devices for wild turkey hunting because they were so effective. If they were used, the hunting season or the bag limit would have to be reduced to maintain the current harvest level. For the past three years, the wild turkey population had stabilized. To compensate for this year's increased hatch, the spring and fall hunting seasons were increased. Additionally, the Department was vigorously addressing complaints of wild turkeys.

Justice And Public Safety Cabinet: Department of Corrections: Division of Local Facilities: Jail Standards for Full-Service Facilities
501 KAR 3:010. Definitions for 501 KAR Chapter 3. Amy Barker, Staff Attorney, and Kelly White, Director, represented the Division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to clarify definitions for "direct supervision area" and "dormitory." Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:020. Administration; management. A motion was made and seconded to approve the following amendments: to amend Section 4 to comply with the drafting and format requirements for KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 3:050. Physical plant. A motion was made and seconded to approve the following amendments: to amend Sections 5 and 6 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 3:060. Security; control. A motion was made and seconded to approve the following amendments: to amend 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.

501 KAR 3:070. Safety; emergency procedures. A motion was made and seconded to approve the following amendments: to
amend Section 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.

501 KAR 3:080. Sanitation; hygiene. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to replace "inmate" with "prisoner"; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 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 3:090. Medical services. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to specify that this administrative regulation applied only to full-service jails; and (2) to amend Section 1 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 3:100. Food services.


501 KAR 3:120. Admission; searches and release. A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 6 to update documentation requirements; (2) to amend Section 6 to deny admissio to the jail for medical reasons; and (2) to amend Sections 3 and 4 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 3:130. Prisoner programs; services.

501 KAR 3:140. Prisoner rights. In response to a question by Senator Tapp, Mr. White stated that the provisions of this administrative regulation were similar to the regulatory requirements of other states.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to exempt inmate conversations with attorneys, clergy, and medical personnel from being recorded; and (2) to amend Sections 1 and 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.

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Amy Barker, Staff Attorney, represented the Office.

A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to update the policies and 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 6:110. Roederer Correctional Complex. A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) update the policies, including those related to health services procedures; (2) add a definition of "biohazardous waste"; (3) make technical changes; and (4) 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 6:270. Probation and parole policies and procedures. A motion was made and seconded to approve the following amendments: to amend Section 1 and the material incorporated by reference to: (1) update and clarify the policies, including those related to payment procedures for fees satisfying restitution and drug testing costs; and (2) comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Restricted Custody Center

501 KAR 7:040. Personnel. Amy Barker, Staff Attorney, and Kitty White, Director, represented the Division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 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.

501 KAR 7:050. Physical plant. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to specify that this administrative regulation applied to restricted custody centers; and (2) to amend Sections 5 and 6 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 7:060. Security; control. A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to require quarterly inspections for security devices and safety equipment; and (2) to amend Sections 3 and 4 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 7:070. Safety; emergency procedures. A motion was made and seconded to approve the following amendments: to amend 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.

501 KAR 7:080. Sanitation; hygiene. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 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.

501 KAR 7:120. Admission; searches and release. A motion was made and seconded to approve the following amendments: to amend Section 4 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 7:140. Prisoner rights. In response to a question by Co-Chair Roeding, Mr. White stated that for security reasons, this administrative regulation authorized the recording of conversations between inmates and visitors. Conversations with certain visitors such as clergy and attorneys were exempted from that requirement to protect the confidentiality of those conversations.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to exempt inmate conversations with attorneys, clergy, and medical personnel from being recorded; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Jail Standards for Counties Housing Class D Felons

501 KAR 13:010. Life safety issues. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete the prohibition against the opening or reopening of any life safety jails to comply with KRS 13A.120(2); and (2) to amend Sections 2 to 4 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 State Police: Driver Training

502 KAR 10:120 & E. Hazardous materials endorsement requirements. Darin Moore, Strategic Planning Branch, and Lt. Adam Whitlock, Kentucky State Police, represented the Department.

In response to a question by Co-Chair Roeding, Lt. Whitlock stated that the endorsement application fee would offset the Department's cost for performing the fingerprint and background investigations required by this administrative regulation.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 and 3 to specify a form to be used; (2) to amend the "Transportation Security Administration Application for Hazardous Materials Endorsement" form to change the form number and edition date; and (3) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

702 KAR 3:030. Insurance requirements. Kevin Noland represented the Department.

A motion was made and seconded to approve the following amendments: 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.

Pupil Transportation

702 KAR 5:110. Vocational pupils, reimbursement for. In response to a question by Co-Chair Roeding, Mr. Noland stated that a local school district had discretion to permit a private school student to participate in its programs.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES 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, as required by KRS 13A.220(4)(f); and (3) to amend Sections 8, 9, 14, and 15 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Learning Programs Development: Office

704 KAR 3:035. Annual professional developmental plan. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES 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, as required by KRS 13A.220(4)(f); (3) to amend Section 2 to delete the requirement that the process for developing a professional development program include a method for evaluating the experiences; (4) to amend Section 4(6) to delete the list of experiences that did not qualify as high quality; and (5) to amend Sections 1 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.

Environmental And Public Protection Cabinet: Department of Labor; Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health


A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify definition citations; and (2) to amend Sections 3 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:308. Personal protective equipment. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify definition citations; and (2) to amend Section 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.

803 KAR 2:314. Machinery and machine guarding. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify definition citations; and (2) to amend Sections 3, 4, and 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.

803 KAR 2:317. Special industries. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify definition citations; and (2) to amend Section 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.

803 KAR 2:319. Commercial diving operations. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify definition citations; and (2) to amend Sections 2 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 2:408. Tools-and-power. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clarify definition citations; and (2) to amend Section 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.

The Subcommittee and the promulgating agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

General Government Cabinet: Boards and Commissions: Board of Medical Licensure

201 KAR 9:018. Physician advertising.

Environmental And Public Protection Cabinet: Department for Natural Resources: 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

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

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

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

Special Performance Standards

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

Areas Unsuitable for Mining


Environmental And Public Protection Cabinet: Department for Natural Resources: Division of Oil and Gas Conservation: Coal Bed Methane

805 KAR 9:030. Surety bonds; requirements, cancellation.

805 KAR 9:050. Gas storage reservoirs; drilling, plugging in vicinity.

805 KAR 9:070. Directional and horizontal wells.

805 KAR 9:090. Production reporting.

The subcommittee adjourned at 10:35 a.m., until May 10, 2005.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.......................................................................................................................... K - 2

The Locator index lists all administrative regulations published in VOLUME 31 of the Administrative Register from July, 2004 through June, 2005. 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 30 are those administrative regulations that were originally published in VOLUME 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 bound Volumes were published.

KRS Index ......................................................................................................................................................... K - 13

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 31 of the Administrative Register.

Subject Index ................................................................................................................................................. K - 23

The Subject index is a general index of administrative regulations published in VOLUME 31 of the Administrative Register, and is mainly broken down by agency.
## LOCATOR INDEX - EFFECTIVE DATES

The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in Volume 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 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)

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>30 Ky.R. Page No.</th>
<th>Effective Date</th>
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<th>30 Ky.R. Page No.</th>
<th>Effective Date</th>
</tr>
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<tr>
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<td>2256</td>
<td>3-17-04</td>
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### ORDINARY ADMINISTRATIVE REGULATIONS:

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<th>30 Ky.R. Page No.</th>
<th>Effective Date</th>
<th>Regulation Number</th>
<th>30 Ky.R. Page No.</th>
<th>Effective Date</th>
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<td>11 KAR 5:034</td>
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<td>(See 31 Ky.R.)</td>
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<td>301 KAR 3:010</td>
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<td>Regulation Number</td>
<td>30 Ky.R. Page No.</td>
<td>Effective Date</td>
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<td>Effective Date</td>
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<td>7-17-03</td>
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<td>5-24-04</td>
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<td>2418</td>
<td>7-14-04</td>
<td>501 KAR 6:040</td>
<td>2262</td>
<td>7-2-04</td>
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<td>7-2-04</td>
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<td>(See 31 Ky.R.)</td>
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<td>7-2-04</td>
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**VOLUME 31**

**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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K - 20
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<td>301 KAR 2:223</td>
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<td>KRS SECTION</td>
<td>REGULATION</td>
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<td>8 U.S.C.</td>
<td>921 KAR 2:006</td>
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<td>11 U.S.C.</td>
<td>921 KAR 2:015</td>
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<td>12 U.S.C.</td>
<td>103 KAR 1:050</td>
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<td>200 KAR 30:040</td>
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<td>201 KAR 30:040</td>
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<td>20 U.S.C.</td>
<td>11 KAR 3:100</td>
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<td>11 KAR 4:040</td>
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<td>11 KAR 18:010</td>
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<td>16 KAR 5:010</td>
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<td>911 KAR 2:110</td>
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<td>911 KAR 2:200</td>
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<td>26 U.S.C.</td>
<td>105 KAR 1:140</td>
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<td>105 KAR 1:330</td>
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<td>31 U.S.C.</td>
<td>45 KAR 1:050</td>
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<td>36 U.S.C.</td>
<td>921 KAR 2:016</td>
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<td>42 U.S.C.</td>
<td>31 KAR 4:140</td>
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<td>105 KAR 1:200</td>
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<td>201 KAR 8:420</td>
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<td>401 KAR 8:075</td>
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<td>401 KAR 57:002</td>
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<td>401 KAR 63:002</td>
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<td>401 KAR 63:106</td>
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<td>702 KAR 6:100</td>
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<td>907 KAR 1:018</td>
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<td>907 KAR 1:479</td>
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<td>907 KAR 3:080</td>
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<td>921 KAR 1:410</td>
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<td>922 KAR 1:360</td>
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<td>922 KAR 2:160</td>
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<td>49 U.S.C.</td>
<td>502 KAR 10:120</td>
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<td>2004 Acts ch. 59</td>
<td>806 KAR 17:280</td>
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<td>2004 Acts ch. 81</td>
<td>806 KAR 17:300</td>
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<td>2004 Acts ch. 96</td>
<td>815 KAR 35:070</td>
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<td>2005 Acts ch. 38</td>
<td>201 KAR 12:200</td>
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<td>Pub.L. 105-261</td>
<td>40 KAR 2:350</td>
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<td>Ky. Const. Sec. 99</td>
<td>103 KAR 1:050</td>
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<td>501 KAR 3:010</td>
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<td>501 KAR 7:010</td>
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<td>501 KAR 10:001</td>
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<td>KY. Const. Sec. 152</td>
<td>501 KAR 7:010</td>
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<td>501 KAR 10:001</td>
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</tbody>
</table>
SUBJECT INDEX

ACCOUNTANCY, STATE BOARD OF
Certificate of experience; 201 KAR 1:063
Computer-based examination sections, applications, and procedures; 201 KAR 1:190
License application; 201 KAR 1:050
Privilege to practice under substantial equivalence standards; license; 201 KAR 1:170

ADOPTION
(See Community Based Services: Protection and Permanency; Child Welfare)

ADULT EDUCATION AND LITERACY
(See Postsecondary Education: Adult Education and Literacy; See also Workforce Development Cabinet)

AGRICULTURE
Dog Law; 302 KAR Chapter 5 (See Dog Law Administration)
Livestock; 302 KAR Chapter 20 (See Livestock)

AIR QUALITY
Asbestos
40 C.F.R. Part 61 national emission standards for asbestos standards; 401 KAR 58:025
General Administrative Procedures
Performance tests; 401 KAR 50:045
Repeal of 401 KAR 50:016; 401 KAR 50:017
General Standards of Performance
40 C.F.R. Part 63 national emission standards for hazardous air pollutants; 401 KAR 63:002
Open burning; 401 KAR 63:005
Repeal of 401 KAR 63:105; 401 KAR 63:106
Hazardous Pollutants
40 C.F.R. Part 61 national emission standards for hazardous air pollutants; 401 KAR 57:022
New Source Performance Standards
40 C.F.R. Part 60 standards of performance for new stationary sources; 401 KAR 60:005
Nonmetallic mineral processing plants; 401 KAR 60:670
New Source Standards
Commercial motor vehicle and mobile equipment refinishing operations; 401 KAR 59:760
Metal cleaning equipment; 401 KAR 59:185

ALCOHOLIC BEVERAGE CONTROL
Advertising Distilled Spirits and Wine
General advertising practices; 804 KAR 1:100
Advertising Malt Beverages
Repeal of 804 KAR 2:007; 804 KAR 2:071
Business and Employees; Conduct of Minors; 804 KAR 5:070
Licensing
Caterer's license; 804 KAR 4:310
Entertainment destination center license; 804 KAR 4:370
Information required; 804 KAR 4:010
License renewals; 804 KAR 4:390
Out-of-state brewers' licenses; 804 KAR 4:350
Records to be retained; 804 KAR 4:100
Repeal of 804 KAR 4:360; 804 KAR 4:361
Through transporters; 804 KAR 4:170
Malt Beverage Equipment Supplies and Services
Equipment, supplies; 804 KAR 11:010
Quotas
Retail limit; 804 KAR 9:010
Retail Premises
First class cities; 804 KAR 7:010

ARCHITECTS, BOARD OF
Examination qualifications; 201 KAR 19:035
Fees; 201 KAR 19:085

ARCHIVES
(See Libraries, Archives)

AUDITOR OF PUBLIC ACCOUNTS
County fee officials audits; 45 KAR 1:040
Fiscal courts audits; 45 KAR 1:050
Sheriffs' tax settlement audits; 45 KAR 1:030

BODY PIERCING
(See Health and Family Services: Food and Cosmetics)

BONDS
(See Finance and Administration: Private Activity Bond Allocation)

BOTTLED WATER
(See Water)

BRAIN INJURY SERVICES
(See Medicaid: Payments and Services, Mental Health and Mental Retardation Services)

BROKERAGE SERVICES
(See Real Estate Commission)

BURNING
(See Air Quality: General Standards of Performance)

CAP GRANT
(See Kentucky Higher Education Assistance Authority: Grant Programs)

CAPITAL CONSTRUCTION
(See Finance and Administration: Purchasing)

CERTIFICATE OF NEED
(See Health and Family Services)

CHILD CARE PLACEMENTS, PRIVATE
(See Community Based Services: Protection and Permanency; Bock Grants)

CHILD SUPPORT
(See Community Based Services)

CHILD WELFARE
(See Community Based Services: Protection and Permanency)

CHILDREN WITH SPECIAL HEALTH CARE NEEDS COMMISSION
Kentucky Early Intervention System; 911 KAR Chapter 2
Assessment, service planning; 911 KAR 2:130
Coverage, payment, program services; 911 KAR 2:200
Personnel qualifications; 911 KAR 2:150
Point of entry; 911 KAR 2:110
Primary service coordination; 911 KAR 2:140
Program evaluation and eligibility; 911 KAR 2:120

COMMUNICABLE DISEASES
(See Health and Family Services)

COMMUNITY BASED SERVICES
Child Support
Child support collection and enforcement; 921 KAR 1:410
Child support distribution; 921 KAR 1:420
Energy Assistance Program/Weatherization
SUBJECT INDEX

Weatherization assistance; 921 KAR 4:118
Investigations
Investigations
Child fatality or near fatality investigations; 922 KAR 1:420
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
Aged, blind, or disabilities; 921 KAR 2:015
K-TAP standards for need; 921 KAR 2:016
Technical requirements for K-TAP; 921 KAR 2:006
Protection and Permanency
Block Grants
Private child care placements, levels of care, payment; 922 KAR 1:360
Child Welfare
Background checks for foster and adoptive parents and reporting requirements; 922 KAR 1:490

CORRECTIONS, DEPARTMENT OF
Direct Supervision for Full-service Jails
Repeal of 501 KAR Chapter 10; 501 KAR 10:001
Institution Policies and Procedures
Department policies and procedures; 501 KAR 6:020
Probation and parole policies and procedures; 501 KAR 6:270
Reorderer correctional complex; 501 KAR 8:110
Secured policies and procedures; 501 KAR 6:999
Jail Standards
Administration, management; 501 KAR 3:020
Admission, searches and release; 501 KAR 3:120
Classification; 501 KAR 3:110
Definitions for 501 KAR Chapter 3; 501 KAR 3:010
Fiscal management; 501 KAR 3:030
Food services; 501 KAR 3:100
Medical services; 501 KAR 3:090
Personnel; 501 KAR 3:040
Prisoner programs, services; 501 KAR 3:130
Prisoner rights; 501 KAR 3:140
Physical plant; 501 KAR 3:050
Safety, emergency procedures; 501 KAR 3:070
Sanitation, hygiene; 501 KAR 3:080
Security, control; 501 KAR 3:060
Jail Standards for Counties Housing Class D Felons
Life safety issues; 501 KAR 13:010
Office of the Secretary
Sex Offender Risk Assessment Advisory Board
Approval process for mental health professionals performing comprehensive sex offender presence evaluations and treatment of sex offenders; 501 KAR 6:190
Treatment for sex offenders; 501 KAR 6:220
Restricted custody center
Administration, management; 501 KAR 7:020
Admission, searches and release; 501 KAR 7:120
Definitions; 501 KAR 7:010
Fiscal management; 501 KAR 7:030
Medical services; 501 KAR 7:090
Personnel; 501 KAR 7:040
Physical plant; 501 KAR 7:050
Prisoner rights; 501 KAR 7:140
Safety, emergency procedures; 501 KAR 7:070
Sanitation, hygiene; 501 KAR 7:080
Security, control; 501 KAR 7:060

CRIMINAL JUSTICE, DEPARTMENT OF
Kentucky Law Enforcement Council
Basic training: graduation requirements, records; 503 KAR 1:110
General Training Provision
Basic law enforcement training course recruit conduct requirements; procedures and penalties; 503 KAR 3:010

DENTISTRY, BOARD OF
HIV, HBV, prevention of transmission; 201 KAR 8:420

DIABETES RESEARCH BOARD ADMINISTRATION
(See Health and Family Services)

DOG LAW ADMINISTRATION
Repeal of 302 KAR Chapter 5; 302 KAR 5:011

EARLY CHILDHOOD DEVELOPMENT SCHOLARSHIP PROGRAM
(See Kentucky Higher Education Assistance Authority)

EARLY INTERVENTION SYSTEM
(See Children with Special Health Care Needs Commission)

ECONOMIC DEVELOPMENT CABINET
Finance Authority
Repeal of 307 KAR 1:020; 307 KAR 1:021

EDUCATION CABINET
Board of Education
Administration
School facilities planning manual-implementation guidelines; 702 KAR 1:001
Food Service Programs
Appeal procedures for school and community nutrition programs; 702 KAR 6:100
Office of Instruction
Annual professional development plan; 704 KAR 3:035
Office of Learning Support Services
Home/hospital instruction; 704 KAR 7:120
Veterans diplomas, World War II and Korean Wars; 704 KAR 7:140
Secondary GED program; 704 KAR 7:150
Pupil transportation
Vocational pupils, reimbursement for; 702 KAR 5:110
School Administration and Finance
Insurance requirements; 702 KAR 3:030
School Terms, Attendance and Operation
Designation of agent to manage high school interscholastic athletics; 702 KAR 7:065
Higher Education Assistance Authority; Title 11 KAR (See Kentucky Higher Education Assistance Authority)
Kentucky Higher Education Assistance Authority, Title 11 KAR (See Kentucky Higher Education Assistance Authority)
Learning Results Services, Bureau of
Assessment and accountability; 703 KAR Chapter 5 (See Learning Results Services, Bureau of
Loan Program (See Kentucky Higher Education Assistance Authority)
Professional Standards Board (See Education Professional Standards Board)

EDUCATION PROFESSIONAL STANDARDS BOARD
Administrative Certificates
Guidance counselor, provisional and standard certificates, all grades; 16 KAR 3:060
Assessment
Examination prerequisites for principal certification; 16 KAR 6:030
Written examination prerequisites for teacher certification; 16 KAR 6:010
Certification Procedures
Qualifications for professional school positions; 16 KAR 4:010
Educator Preparation
Standards for accreditation of educator preparation units and approval of programs; 16 KAR 5:010
Internship

K - 26
SUBJECT INDEX

Kentucky Teacher Internship Program; 16 KAR 7:010
Teaching Certificates
Junior Reserve Officers Training Corps certification; 16 KAR 2:100
School psychologist; 16 KAR 2:090

ELECTIONS, STATE BOARD OF
Forms and Procedures
Absentee ballot applications to IVAS by e-mail; 31 KAR 4:140

ELECTRICAL INSPECTORS
(See Housing, Buildings and Construction)

EMPLOYEES, STATE
(See Personnel)

EMPLOYMENT SERVICES
(See Workforce Development Cabinet)

ENERGY ASSISTANCE PROGRAM
(See Community Based Services: Energy Assistance Program/Weatherization)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Alcoholic Beverage Control; Title 804 KAR (See Alcoholic Beverage Control)
Conservation
Oil and Gas; 805 KAR Chapter 1 and 9 (See Oil and Gas Conservation)
Environmental Protection
Air Quality; 401 KAR Chapters 50 through 68 (See Air Quality)
Water; 401 KAR Chapters 4 through 8 (See Water)
Underground Storage Tanks (See Underground Storage Tanks)

Housing, Buildings and Construction
Electrical inspectors; 815 KAR Chapter 35 (See Housing, Buildings and Construction)

Insurance; 806 KAR Chapters 1 through 50 (See Insurance)
Labor; 803 KAR Chapters 1 through 50 (See Labor Cabinet)
Public Service Commission; 807 KAR Chapters 1 through 6 (See Public Service Commission)

ETHICS COMMISSION, EXECUTIVE BRANCH
(See Executive Branch Ethics Commission)

EXECUTIVE BRANCH ETHICS COMMISSION
Administrative proceedings; 9 KAR 1:030
Disbursements from charitable fundraisers; 9 KAR 1:060

FINANCE AND ADMINISTRATION CABINET
Agricultural Finance Corporation
Repeal of 200 KAR 18:020; 200 KAR 18:021
Office of the Controller
Advancements to sheriffs; 200 KAR 38:050
Allocation of DUI service fees; 200 KAR 38:020
Allocation of criminal court fees; 200 KAR 38:030
Allocation of fees for disabled permit parking violation; 200 KAR 38:040
Private Activity Bond Allocation
Private activity bonds, allocation of; 200 KAR 15:010

Purchasing
Capital construction, alternative project deliver methods; 200 KAR 5:365
Manual of Policies and Procedures; 200 KAR 5:021
Multistep competitive sealed bidding; 200 KAR 5:375
Noncompetitive negotiations; 200 KAR 5:309
Policies and procedures manual; 200 KAR 5:021
State Investment Commission
Qualified investments; 200 KAR 14:011
Repurchase agreement; 200 KAR 14:081

Travel Expense and Reimbursement
Employees' reimbursement for travel; 200 KAR 2:006

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
Fish
Sport and rough fishing; 301 KAR 1:060
Game
Deer hunting on state parks; 301 KAR 2:179
Deer hunting on WMAs; 301 KAR 2:178
Deer hunting seasons and requirements; 301 KAR 2:172
Deer hunting zones; 301 KAR 2:174
Deer, turkey, federal areas; 301 KAR 2:111
Dove, wood duck, teal, migratory game bird hunting; 301 KAR 2:225
Elk depredation permits, landowner cooperator permits, quota hunts; 301 KAR 2:132
Furbearers, small game, trapping season limits; 301 KAR 2:049 and 2:251
Furbearers, small game, hunting on public areas; 301 KAR 2:049
Repeal of 301 KAR 2:240; 301 KAR 2:241
Shooting preserves, foxhound training enclosures; 301 KAR 2:041
Transportation, holding of exotic wildlife; 301 KAR 2:082
Transportation, holding of native wildlife; 301 KAR 2:081

Waterfowl
Hunting requirements; 301 KAR 2:222
Wild turkey hunting, fall; 301 KAR 2:144

Hunting and Fishing
Commercial nuisance wildlife control; 301 KAR 3:120
Fees, licensee, tag and permit; 301 KAR 3:022
Season, year-round, wildlife; 301 KAR 3:030
Wildlife
Collecting permits, scientific and educational; 301 KAR 4:070

FISHING
(See Fish and Wildlife Resources)

FOOD AND COSMETICS
(See Health and Family Services)

FOSTER CARE
(See Community Based Services: Protection and Permanency: Child Welfare)

GAME
(See Fish and Wildlife Resources)

GED PROGRAM
(See Education Cabinet: Board of Education: Office of Learning Support Services)

GENERAL GOVERNMENT CABINET
Accountancy, State Board of; 201 KAR Chapter 1 (See Accountancy)
Architects, Board of; 201 KAR Chapter 19 (See Architects)
Dentistry, Board of; 201 KAR Chapter 8 (See Dentistry)
Geologists; 201 KAR Chapter 31 (See Geologists)
Marriage and Family Therapists, State Board; 201 KAR Chapter 32 (See Marriage and Family Therapists)
Medical Licensing Board; 201 KAR Chapter 9 (See Medical Licensing)
Occupational Therapy, Licensure for; 201 KAR Chapter 28 (See Occupational Therapy)
Physical Therapy, Board of; 201 KAR Chapter 22 (See Physical Therapy)
Professional Engineers and Land Surveyors, Board of Licensure
SUBJECT INDEX

Experience; 201 KAR 18:072
In-training certificates; 201 KAR 18:030
Surveying core curriculum; 201 KAR 18:092
Psychology, Board of Examiners; 201 KAR Chapter 25 (See Psychology)
Real Estate Commission; 201 KAR Chapter 11 (See Real Estate Commission)
Veterans Affairs; 201 KAR Chapter 37 (See Veterans Affairs)
Veterinary Examiners; 201 KAR Chapter 16 (See Veterinary Examiners Board)

GEOLGISTS, BOARD OF PROFESSIONAL
Fees; 201 KAR 30:060
Standards of practice; 201 KAR 30:040

GOVERNOR'S OFFICE OF AGRICULTURAL POLICY
Guaranteed security instruments, procedure for selling; 202 KAR 9:010

GRANT PROGRAMS, HIGHER EDUCATION
KHEAA Grant Programs; 11 KAR Chapter 5 (See Kentucky Higher Education Assistance Authority)

HAIRDRESSERS, COSMETOLOGISTS
License renewal, continuing education; 201 KAR 12:200

HEALTH AND FAMILY SERVICES CABINET
Children with Special Health Care Needs Commission
Kentucky Early Intervention System; 911 KAR Chapter 2 (See Children with Special Health Care Needs Commission)
Certificate of Need
Expenditure Minimums; 900 KAR 6:030
Certificate of need; 900 KAR 6:050
Communicable Diseases
Disease surveillance; 902 KAR 2.020
Diabetes research board administration; 902 KAR 35:010
Food and Cosmetics
Body piercing; 902 KAR 45:070
Health Services and Facilities
Primary care centers; 902 KAR 20:058
K-TAP, Kentucky Works, Welfare to Work, State Supplementation; 921 KAR Chapter 2 (See Community Based Services)
Medicaid Services; 907 KAR Chapter 1 (See Medicaid)
Mental Health and Mental Retardation Services; 908 KAR Chapters 1 through 5 (See Mental Health and Mental Retardation Services)
State health plan; 900 KAR 5:020

HEALTH MAINTENANCE ORGANIZATIONS
(See Insurance)

HIGHER EDUCATION ASSISTANCE AUTHORITY
(See Kentucky Higher Education Assistance Authority)

HIGHWAYS, DEPARTMENT OF
Right-of-Way
TODS signs placement, public roads other than interstates or parkways; 603 KAR 4:040

HORSE RACING, THOROUGHBRED
Jockeys and apprentices; 810 KAR 1:009
Stewards; 810 KAR 1:004

HOUSING, BUILDINGS AND CONSTRUCTION
Boilers and Pressure Vessels
Fees for licensing new boiler and pressure vessel contractors; 815 KAR 15:080
Building Code
Certified Building Inspector Program; 815 KAR 7:070
Kentucky Building Code/2002; 815 KAR 7:120

Residential Code/2002; 815 KAR 7:125
Electrical inspectors
Certification; 815 KAR 35:015
Code of ethics; 815 KAR 35:080
Continuing education procedure; 815 KAR 35:100
Licensing, electrical contractors, electricians, master electricians; 815 KAR 35:060
Low-voltage installers' certification; 815 KAR 35:070
Repeal of 815 KAR 35:030; 815 KAR 35:031
Training program standards; 815 KAR 35:090
Heating, Ventilation, and Air Conditioning Licensing Requirements
Apprentice HVAC mechanic registration and certification; 815 KAR 8:030
Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements; 815 KAR 8:020
"Limited" licenses for journeyman HVAC mechanics; 815 KAR 8:045
Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements; 815 KAR 8:010
Manufactured Homes and Recreational Vehicles
Manufactured home installers, requirements for certification; 815 KAR 25:080

HUNTING
(See Fish and Wildlife Resources)

HVAC (HEATING, VENTILATION, AND AIR CONDITIONING)
(See Housing, Buildings and Construction: Heating Ventilation, and Air Conditioning Licensing Requirements)

INSURANCE
Assets, Liabilities
Life insurance and annuity reserves; 806 KAR 6:070
Life insurance policies, valuation; 806 KAR 6:075
Mortality table, 2001 CSO, for minimum reserve liabilities and nonforfeiture benefits; 806 KAR 8:110
Smoker, nonsmoker rates; 806 KAR 8:090
Valuation standards; audits; 806 KAR 8:010
Group and Blanket Health Insurance
Repeal of 806 KAR 18:080; 806 KAR 18:081
Health Insurance Contracts
Health benefit plan, comparison format; 806 KAR 17:180
Hospice benefit requirements; 806 KAR 17:480
Independent External Review Program; 806 KAR 17:290
Provider agreement filing requirements; 806 KAR 17:300
Registration, utilization review, internal appeal; 806 KAR 17:280
Health Maintenance Organizations (HMOs)
Repeal of 806 KAR 38:030; 806 KAR 38:031
Surplus Lines
Affidavits; 806 KAR 10:050
Repeal of 806 KAR 10:020; 806 KAR 10:021

JAILS
(See Corrections)

JUSTICE AND PUBLIC SAFETY CABINET
Corrections, Department of; Title 501 KAR (See Corrections)
Criminal Justice, Department of; Title 503 (See Criminal Justice)
State Police, Department of; Title 502 KAR (See State Police)

KENTUCKY AFFORDABLE PREPAID TUITION (KAPT)
Administrative fees; 11 KAR 17:100
Applying for prepaid tuition contract; 11 KAR 17:040
Definitions; 11 KAR 17:010

KENTUCKY CERTIFIED BUILDING INSPECTOR PROGRAM
(See Housing Buildings and Construction: Building Code)

K - 28
SUBJECT INDEX

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Authority
Eligibility to participate, disapproval, assessment of liabilities, limitation, suspension, termination; 11 KAR 4:020
Institution participation; 11 KAR 4:040
Repeal of 11 KAR 4:070; 11 KAR 4:071
Early Childhood Development Scholarship Program
Definitions; 11 KAR 16.001
Grant Programs
CAP grant award determination procedure; 11 KAR 5:145
CAP grant student eligibility; 11 KAR 5:034
Definitions; 11 KAR 5:001
Disbursement procedures; 11 KAR 5:160
KTG award determination procedure; 11 KAR 5:140
KTG student eligibility requirements; 11 KAR 5:033
Student application; 11 KAR 5:130
Kentucky Affordable Prepaid Tuition Plan (KAPT); 11 KAR Chapter 17 (See Kentucky Affordable Prepaid Tuition Plan (KAPT)
Loan Program
Administrative wage garnishment; 11 KAR 3:100
Osteopathic Medicine Scholarship Program
Application of payments; 11 KAR 14:060
Robert C. Byrd Honors Scholarship Program; 11 KAR 18:010
Teacher Scholarship Loan Program
Deferment of scholarship repayment; 11 KAR 6:040
Teacher scholarships; 11 KAR 6:030
Work Study Program
Program; 11 KAR 6:010

KENTUCKY HORSE RACING AUTHORITY
(See Horse Racing, Thoroughbred)

KENTUCKY RESIDENTIAL CODE
(See Housing, Buildings and Construction: Building Code)

KENTUCKY TEACHER INTERNSHIP PROGRAM
(See Education Professional Standards Board)

KENTUCKY WORKS
(See Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation)

K-TAP
(See Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation)

KTG GRANTS AND SCHOLARSHIPS
(See Kentucky Higher Education Assistance Authority: Grant Programs)

LABOR CABINET
Occupational Safety and Health
Commercial diving operations; 803 KAR 2:319
Hazardous materials; 803 KAR 2:307
Machinery and machine guarding; 803 KAR 2:314
Maritime employment; 803 KAR 2:500
Personnel protective equipment; 803 KAR 2:308
Special industries; 803 KAR 2:317
Tools-hand and power; 803 KAR 2:408
Wages and Hours
Executive, administrative, supervisory, professional employees, salesmen; 803 KAR 1:070

LAW, DEPARTMENT OF
Consumer Protection, Division of
Dept Adjusters; 40 KAR 2:350
Tobacco Product Manufacturers; 40 KAR Chapter 8 (See Tobacco Product Manufacturers)

LEARNING RESULTS SERVICES, BUREAU OF
Assessment and Accountability
Relating accountability index to school classifications (A1-A6); 703 KAR 5:040

LIBRARIES, ARCHIVES
Collection and distribution of reports and publications; 725 KAR 1:040

LIVESTOCK
Sanitation
Vesicular stomatitis; 302 KAR 20:115

LOAN PROGRAMS
(See Economic Development: Finance Authority)

LOCAL GOVERNMENT, DEPARTMENT FOR
Advancements to Sheriffs

MANUFACTURED HOMES
(See Housing, Buildings and Construction: Manufactured Homes and Recreational Vehicles)

MARRIAGE AND FAMILY THERAPISTS, STATE BOARD OF
Associate; 201 KAR 32:025

MEDICAID
Payments and Services
Acquired brain injury services; 907 KAR 3:090
Physicians' services reimbursement; 907 KAR 3:010
Services
Community living services, payments for supports; 907 KAR 1:155
Durable medical equipment benefits, reimbursement; 907 KAR 1:479
Intermediate care facility for individuals with mental retardation or a developmental disability, a dually-licensed pediatric facility, an institution for mental diseases, or a nursing facility with an all-inclusive rates unit; 907 KAR 1:025
Mental health center, payments for services; 907 KAR 1:045
Nursing facility services, intermediate care facility, mentally retarded, developmental disability services; 907 KAR 1:022
Price-based nursing facility services, payments; 907 KAR 1:065
Outpatient pharmacy program; 907 KAR 1:019
Reimbursement for drugs; 907 KAR 1:018

MEDICAL LICENSURE, BOARD OF
Repeal of 201 KAR 9:175, 201 KAR 9:176
Fee schedule; 201 KAR 9:041
Physician advertising; 201 KAR 9:018

MENTAL HEALTH AND MENTAL RETARDATION SERVICES
(See also Medicaid)
Institutional Care
Means test; 908 KAR 3:060
Per diem rates pursuant to KRS 210.710-210.760; 908 KAR 3:050
Traumatic Brain Injury Trust Fund Board
Traumatic brain injury trust fund operations; 908 KAR 4:030

MILK AND MILK PRODUCTS
(See Public Health)

NURSING, BOARD OF
Applications for licensure, registration; 201 KAR 20:370
Continuing competence requirements; 201 KAR 20:215
Dialysis technician credentialing and training; 201 KAR 20:470
Fees; 201 KAR 20:240

K - 29
SUBJECT INDEX

License reinstatement; 201 KAR 20:225
License renewal; 201 KAR 20:230
Licensure by endorsement; 201 KAR 20:110
Licensure by examination; 201 KAR 20:070
Licensure periods; 201 KAR 20:085
Retired nurse licensure status; 201 KAR 20:095
Sexual Assault Nurse Examiner Program standards, credential requirements; 201 KAR 20:411

OCCUPATIONAL SAFETY AND HEALTH
(See Labor Cabinet)

OCCUPATIONAL THERAPY, BOARD OF LICENSURE
Fees; 201 KAR 28:110
Renewals; 201 KAR 28:090
Status, inactive; 201 KAR 28:210

OIL AND GAS CONSERVATION
Coal bed methane wells, operating or deepening and drilling deeper than permitted depth; 805 KAR 9:060
Directional and horizontal wells; 805 KAR 9:070
Gas storage reservoirs; drilling; plugging in vicinity; 805 KAR 9:050
Operations content and reclamation proposal, form; 805 KAR 9:080
Plugging wells; 805 KAR 9:040
Production reporting; 805 KAR 9:090
Protection of fresh water zones; 805 KAR 9:010
Public liability insurance and self-insurers; 805 KAR 9:100
Surety bonds; requirements, cancellation; 805 KAR 9:030
Well location plat, preparation, form and contents; 805 KAR 9:020

OSTEOPATHIC MEDICINE SCHOLARSHIP PROGRAM
(See Kentucky Higher Education Assistance Authority)

PERSONNEL
Board
Probationary Periods; 101 KAR 1:325

PHYSICAL THERAPY, BOARD OF
Board member per diem; 201 KAR 22:130
Change of name, employment, address of credential holder; 201 KAR 22:035
Code of ethics and standards; 201 KAR 22:053
Committee funding; 201 KAR 22:140
Complaint procedure, disciplinary action of credential holder or applicant; 201 KAR 22:052
Continued competency requirements; procedures; 201 KAR 22:045
Definitions; 201 KAR 22:001
Eligibility and credentialing; 201 KAR 22:020
Fees; 201 KAR 22:135
Foreign-educated physical therapist, requirements; 201 KAR 22:070
Impaired Practitioners Alternative Program; 201 KAR 22:150
Renewal, reinstatement procedure for a physical therapist or assistant; 201 KAR 22:040
Repeal of 201 KAR 22:031, 061, 101, and 106; 201 KAR 22:091

POLICE
(See State Police)

POLYGRAPH
(See State Police)

POSTSECONDARY EDUCATION, ADULT EDUCATION AND LITERACY
Nonpublic Colleges
GED testing program; 785 KAR 1:010
GED eligibility requirements; 785 KAR 1:130
Public Education Institutions
Residency status for admission and tuition purposes; 13 KAR 2:045

PRISONS
(See Corrections)

PSYCHOLOGY BOARD OF EXAMINERS
Associate license, application procedures; 201 KAR 26:280
Code of conduct; 201 KAR 26:145
Continuing education; 201 KAR 26:175
Employment of a psychological associate; 201 KAR 26:250
Examinations; 201 KAR 26:230
Inactive status; 201 KAR 26:165
License, application procedures; 201 KAR 26:155
Practitioner license, application procedures; 201 KAR 26:290
Reciprocity, licensure by; 201 KAR 26:180
Supervised professional experience requirements; 201 KAR 26:190
Supervision requirements; 201 KAR 26:171

PUBLIC HEALTH
Communicable Diseases
Rabies control; 902 KAR 2:070
Health Services and Facilities
Primary care centers; 902 KAR 20:058
Milk and Milk Products
Grade A milk and milk product standards; 902 KAR 50:110
Radiology
Fee schedule; 902 KAR 100:012
Radionuclides in the health arts, use of; 902 KAR 100:072
Repeal of 902 KAR 100:073 902 KAR 100:071

PUBLIC SERVICE COMMISSION
Utilities
Applications for certificate of public convenience and necessity for certain electric transmission lines; 807 KAR 5:120

RABIES CONTROL
(See Public Health: Communicable Diseases)

RACING, HORSE
(See Horse Racing, Thoroughbred)

RADIOLOGY
(See Public Health)

REAL ESTATE COMMISSION
Brokerage Services
Duties pursuant to designated agency; 201 KAR 11:410
Retention of brokers' records; 201 KAR 11:062
Written offers; agreements; 201 KAR 11:045
Contracts, listing and purchase; 201 KAR 11:250
Definitions; 201 KAR 11:011
Disclosure, agency requirements; 201 KAR 11:400
Federally-related transactions; certification, licensure; 201 KAR 30:030
Improper conduct; 201 KAR 11:121
Licenses
Cancellation, reasons for; 201 KAR 11:030
Criminal records background check; disciplinary action; 201 KAR 11:430
Procedure for license retention when released by broker; 201 KAR 11:147
Out-of-state property and time-shares, registration and prerequisites; 201 KAR 11:180
Owner's consent and authorization; 201 KAR 11:105
Repeal of 201 KAR 11:040; 201 KAR 11:041
Seller's disclosure of property conditions form; 201 KAR 11:350
Standards of practice; 201 KAR 30:040

RETIREMENT SYSTEM, KENTUCKY EMPLOYEES
Annual disability review; 105 KAR 1:220
Contribution reporting; 105 KAR 1:140
Death after retirement; 105 KAR 1:240
Disability procedures; 105 KAR 1:210
Fred Capps Memorial Act; 105 KAR 1:310
Personnel policies; 105 KAR 1:370
Reciprocal programs between systems; 105 KAR 1:020
Retirement procedures, forms; 105 KAR 1:200

K - 30
SUBJECT INDEX

REVENUE CABINET
Administration
Forms manual; 103 KAR 1:050
Sales and Use Tax
Administration and Accounting
Repeal of 103 KAR 31:040; 103 KAR 31:041
General Exemptions
Repeal of 103 KAR 30:020; 103 KAR 30:021
Registration and Collection
Repeal of 103 KAR 25:031; 103 KAR 25:101

SALES AND USE TAX
(See Revenue Cabinet)

SCHOOLBUSES
(See Education Cabinet: Pupil Transportation)

SCHOOLS
(See Education Cabinet)

SEX OFFENDER RISK ASSESSMENT ADVISORY BOARD
(See Corrections, Department of: Office of the Secretary)

STATE HEALTH PLAN
(See Health and Family Services)

STATE INVESTMENT COMMISSION
(See Finance and Administration Cabinet)

STATE POLICE
Driver Training
Hazardous materials endorsement requirements; 502 KAR 10:120
Polygraph
Examiners; 502 KAR 20:020

TAXATION
(See Revenue Cabinet)

TEACHER INTERNSHIP PROGRAM
(See Education Professional Standards Board: Kentucky Teacher Internship Program)

TEACHER SCHOLARSHIP LOAN PROGRAM
(See Kentucky Higher Education Assistance Authority)

TEACHERS' RETIREMENT SYSTEM
General Rules
Investment policies; 102 KAR 1:175

THOROUGHBRED RACING
(See Horse Racing, Thoroughbred)

TOBACCO PRODUCT MANUFACTURERS
Nonparticipating manufacturer quarterly escrow deposit, certification; 40 KAR 8:010

TRANSPORTATION
Highways; 603 KAR Chapter 4 (See Highways)
Vehicle Regulation, Department of; Title 601 KAR (See Vehicle Regulation)

TRAVEL EXPENSE AND REIMBURSEMENT
(See Finance and Administration Cabinet)

UTILITIES
(See Public Service Commission)

UNDERGROUND STORAGE TANKS
Financial responsibility account; 401 KAR 42.260

UNEMPLOYMENT SERVICES
(See Workforce Development Cabinet: Employment Services)

VEHICLE REGULATION
Commercial Driver's License
Fees relating to commercial driver's licenses; 601 KAR 11:010
Motor Carriers
Safety; 801 KAR 1:005
Transporting hazardous material; 601 KAR 1:025

VETERANS AFFAIRS
Trust fund administration; 201 KAR 37:010

VETERINARY EXAMINERS BOARD
Continuing education; 201 KAR 18:050
Fees; 201 KAR 16:015
License, renewal notice; 201 KAR 16:030

VOTING
(See Elections)

WATER
Public Water Supply
Bottled water; 401 KAR 8:703
Consumer confidence reports; 401 KAR 8:075
Definitions; 401 KAR 8:010
Disinfection, filtration, recycling; 401 KAR 8:150
General provisions, public, semipublic; 401 KAR 8:020
Lead and copper; 401 KAR 8:300
Public notification; 401 KAR 8:070
Repeal of 401 KAR 8:440; 401 KAR 8:441
Water Resources
Water withdrawal permits, criteria, reports; 401 KAR 4:010

WEATHERIZATION
(See Community Based Services: Energy Assistance Program/Weatherization)

WELFARE, CHILD
(See Community Based Services: Protection and Permanency)

WELFARE TO WORK
(See Community Based Services: K-TAP, Kentucky Works, Welfare to Work, State Supplementation)

WILDLIFE
(See Fish and Wildlife Resources)

WORKFORCE DEVELOPMENT CABINET
Adult Education and Literacy, Department of
GED eligibility requirements; 785 KAR 1:130
Employment Services, Department of
Unemployment Insurance
Application for employer account, reports; 787 KAR 1:010

WORK STUDY PROGRAM
(See Kentucky Higher Education Assistance Authority)