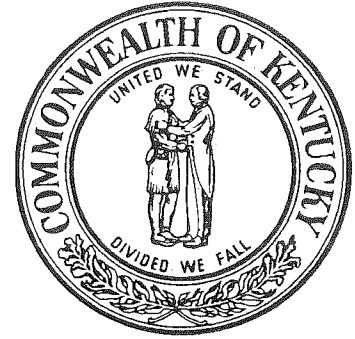


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 36, NUMBER 12
TUESDAY, JUNE 1, 2010

ATTENTION

ATTENTION

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YOUR SUBSCRIPTION EXPIRES WITH THE JUNE 2010 ISSUE

All subscriptions to the monthly "Administrative Register of Kentucky" expire with the June 1, 2010 issue (the final issue of Volume 36).

Volume 37 will begin with the July 1, 2010 issue and will include twelve monthly issues through June 1, 2011.

IMPORTANT NOTICE

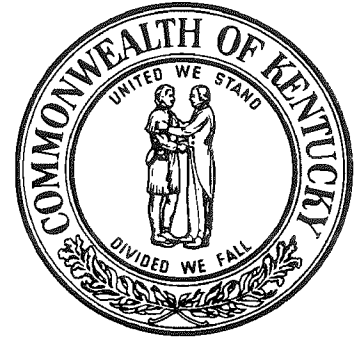
Dear Subscriber:

The Legislative Research Commission (LRC) recognizes that subscribers are facing difficult economic times. In order to help our subscribers save money, LRC will begin making the *Administrative Regulations Service (Service)* available on DVD-Rom and the *Administrative Register of Kentucky (Register)* available in portable document format. The DVD, which will contain a compilation of all Kentucky administrative regulations in effect as of June 15, 2010, will be available for \$5.00 (plus 6% sales tax for Kentucky residents). Beginning with the July 2010 issue, the monthly *Register* will be published and archived in .pdf format free-of-charge on the LRC Web site.

LRC will continue to offer subscriptions to the paper version of both publications; however, in order to cover the actual cost of publication, subscription prices are likely to increase. The 2009 subscription rate for the bound version of the *Service* was \$170.00, the *Register* was \$96.00, and a combination subscription to both publications was \$250.00. An order form outlining the subscription prices will be sent to current subscribers. Once prices are set, the order form will also be available on the LRC Web site at <http://www.lrc.ky.gov/kar/OrderForm>.

LRC will continue to work toward utilizing the ever-changing world of technology and to ensure that Kentuckians have easy access to Kentucky's laws.

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet June 8, 2010 at 1:00 p.m. in room 149 Capitol Annex. See **tentative agenda** on pages 2277-2278 of this Administrative Register.

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

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

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA, JUNE 8, 2010, at 1:00 p.m., Room 149 Capitol Annex**

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- 201 KAR 22:135. Fees.

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- 301 KAR 2:132. Elk depredation permits, landowner cooperators permits, and quota hunts. (Amended After Comments)

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- 401 KAR 5:045. Biochemically degradable wastes; treatment. (Not Amended After Comments)
- 401 KAR 5:070. Provisions of the KPDES permit. (Not Amended After Comments)
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- 704 KAR 3:540. Uniform academic course codes.

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**Department of Workforce Investment
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- 781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.
- 781 KAR 1:040. Rehabilitation technology services.

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Kentucky Workers' Compensation Funding Commission**

Workers' Compensation Funding Commission

- 803 KAR 30:010. Special fund assessments.

**PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control**

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- 804 KAR 11:030. Beer tastings. (Amended After Comments)

**Kentucky Horse Racing Commission
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- 810 KAR 1:025 & E. Licensing thoroughbred racing. ("E" expires 9/22/10)
- 810 KAR 1:037 & E. Licensing of racing associations. ("E" expires 9/13/10)
- 810 KAR 1:100 & E. Frivolous appeals. ("E" expires 9/13/10)

Harness Racing

- 811 KAR 1:037 & E. Licensing of racing associations. ("E" expires 9/23/10)
- 811 KAR 1:230 & E. Frivolous appeals. ("E" expires 9/13/10)

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**DEPARTMENT OF HOUSING, BUILDINGS AND CONSTRUCTION
DIVISION OF BUILDING CODE ENFORCEMENT**

Kentucky Building Code

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

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Plumbing

815 KAR 20:018. State plumbing code committee budget review and responsibility.

**CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy**

State Health Plan

900 KAR 5:020. State Health Plan for facilities and services.

Certificate of Need

900 KAR 6:020. Certificate of need application fees schedule.

900 KAR 6:060. Timetable for submission of certificate of need applications.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established 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 until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing 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, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required 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.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, MAY 14, 2010

STATEMENT OF EMERGENCY
201 KAR 16:030E

This emergency administrative regulation establishes the mechanism for International Federation of Equestrian Sports veterinarians to participate in the World Equestrian Games in the Commonwealth. This emergency administrative regulation must be placed into effect immediately in order ensure that international teams can have their own veterinary provide services for the equestrian teams at the World Equestrian Games. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on May 13, 2010. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVE BESHEAR, Governor
DR. PERRY WORNALL, DVM, Chair

GENERAL GOVERNMENT CABINET
Board of Veterinary Examiners
(Emergency Amendment)

201 KAR 16:030E. License, renewal notice, exemption.

RELATES TO: KRS 321.193, 321.200(1)(e), 321.211, 321.221, 321.441

STATUTORY AUTHORITY: KRS 321.235, 321.240

EFFECTIVE: May 13, 2010

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193, 321.221, and 321.441 require the board to issue a license or registration to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine or as a veterinary technician or veterinary technologist in this state. KRS 321.211 and 321.441 provide for the renewal of the license or registration. This administrative regulation requires the mailing of a renewal notice to all licensed veterinarians, veterinary technicians, and veterinary technologists and requires all licensed veterinarians, veterinary technicians, and veterinary technologists to complete the renewal notice and return it, along with the renewal fee to the board. It further requires all licensed veterinarians, veterinary technicians, and veterinary technologists to keep the board apprised of the current address of the licensee. It exempts certain veterinarians from licensure in relation to the World Equestrian Games.

Section 1. (1) The Kentucky Board of Veterinary Examiners shall on or about August of each even-numbered year mail to each licensed veterinarian a renewal notice.

(2) The Kentucky Board of Veterinary Examiners shall on or about August of each year mail to each licensed veterinary technician, and veterinary technologist an annual renewal notice.

(3) This renewal notice shall be completed and received by the board on or before September 30 of the appropriate year.

(4) Renewals bearing a postmark of September 30 or earlier shall be considered received in a timely manner.

(5)(a) The renewal fee shall be attached to the completed renewal notice when it is returned to the board.

(b) The renewal fee shall be paid by personal check, certified check, cashier's check or postal money order, payable to the Kentucky State Treasurer.

(6) All information requested on the renewal notice shall be furnished to the board when the completed renewal notice is returned to the board.

Section 2. Every licensed veterinarian, veterinary technician, or veterinary technologist shall file his proper and current mailing address with the board at its principal office and shall immediately notify the board of any and all changes of his mailing address.

Section 3. (1) Every licensed veterinarian shall list their continuing education hours received pursuant to 201 KAR 16:050 with the renewal form and furnished the information to the board.

(2)(a) The board shall not renew the license of any person who fails to receive or appropriately document the required hours of continuing education.

(b) The license shall expire and subsequently be terminated as prescribed by KRS 321.211.

Section 4. (1) Persons listed by the Fédération Équestre Internationale (FEI) as qualified to provide veterinary services are exempt from licensure for the limited purpose of providing veterinary services to horses participating in the World Equestrian Games.

(2) This exemption shall be limited to the period relating to the World Equestrian Games beginning on September 1, 2010 until October 31, 2010.

DR. PERRY WORNALL, DVM, Chair

APPROVED BY AGENCY: March 25, 2010

FILED WITH LRC: May 13, 2010 at noon

CONTACT PERSON: Frances Short, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frances Short, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for licensure and renewal of licensure for veterinarians, veterinary technicians, and veterinary technologists.

(b) The necessity of this administrative regulation: This regulation is necessary for provide licensees with a clearly defined procedure for licensure and licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(3) and 321.240(5) authorized the board to promulgate regulations to carry out and enforce the provisions of KRS Chapter 321. KRS 321.200(1)(e) exemptions lawfully licensed veterinarians from other states from licensure under certain circumstances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth guidelines for licensure and renewals.

(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 exempt lawfully qualified veterinarians from licensure requirements for the World Equestrian Games.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to clarify the limited exemption for lawfully qualified veterinarians residing in other states from licensure while attending to horses at the World Equestrian Games.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.200(1)(e) exempts lawfully qualified veterinarians residing in other states from licensure.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will allow the Board to enforce the requirements as to team veterinarians working with foreign teams as recognized by the Fédération Équestre Internationale (FEI).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50 national teams will be competing in the World Equestrian Games during the limited period in question.

(4) Provide an analysis of how the entities identified in question (3) three will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) three will have to take to comply with this administrative regulation or amendment: No action will be required from the persons listed in the answer to question (3) three.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) three: This administrative regulation will clarify the period during which the individuals may practice of the specific teams they represent.

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

(a) Initially: The board estimates that no additional costs will be incurred by this new regulation.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by the new regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by license holders and applicants.

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

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

(9) TIERING: Is tiering applied? Yes. Criteria apply equally to veterinarians who come within the requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Veterinary Examiners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.181(5)(b), 321.200(1)(e).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 405 KAR 8:010E

KRS 350.465(2) requires the cabinet to provide a program for the control and regulation of surface mining in a manner to accomplish the goals of KRS Chapter 350. KRS 350.060, 350.070, and

350.135 provides the cabinet with the authority to establish fees for the cost of processing applications for permits. Currently, the amount received from the permitting process set in this administrative regulation does not cover the cost of staff and resources for the surface mining permitting program. Therefore, the cabinet is unable to provide timely and thorough review of the permit applications or to provide timely action on permits to mining entities. HB 283 2010 GA, which increases permit fees listed in KRS 350.060, 350.070, and 350.135, passed by both houses and signed by the Governor took effect with its enrollment on April 8, 2010. This emergency administrative regulation is necessary to implement the provisions of that enactment while the identical ordinary regulation is pending. The emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

STEVEN L. BESHEAR, Governor

LEONARD K. PETERS, Secretary

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Emergency Amendment)

405 KAR 8:010E. General provisions for permits.

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

EFFECTIVE DATE: April 20, 2010

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require [~~Chapter 350 in pertinent part requires~~] the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation provides for permits to conduct these operations. The administrative regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, [~~and~~] sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

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

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

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

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

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

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

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

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

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

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

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

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

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

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

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

(b) The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner pre-

scribed by the cabinet with attachments, plans, maps, certifications, drawings, calculations or other documentation or relevant information as the cabinet may require.

(c) The following forms~~[-which]~~ are required to be submitted by an applicant ~~[applicants, are hereby incorporated by reference]~~:

1. Preliminary Application, MPA-00, 11/91;
2. Permittee Information for a Mining Permit, MPA-01, 11/91;
3. Operator Information for a Mining Permit, MPA-02, 11/91;
4. Technical Information for a Mining Permit, MPA-03, 11/91;
5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B, 11/91;
6. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.C, 11/91;
7. Application to Revise a Mining Plan, MPA-04, 11/91;
8. Update of Permittee or Operator Information, MPA-05, 11/91;
9. Change of Corporate Owners, Officers or Directors, MPA-06, 11/91;
10. Application to Transfer a Mining Permit, MPA-07, 11/91;
11. Revision Application to Change Operator, MPA-08, 11/91;
12. Application for Renewal of a Mining Permit, MPA-09, 11/91;
13. Application for a Coal Marketing Deferral, MPA-10, 11/91; and
14. Minor Field Revision Application Form, SME 80, revised 9/91.

(d) ~~[These forms may be reviewed or obtained at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

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

- (a) Names of persons or organizations which collected and analyzed the data;
- (b) Dates of the collection and analyses; and
- (c) Descriptions of methodology used to collect and analyze the data.

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

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

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

(6) General requirements for maps and plans.

(a) If any of the information marked on the preliminary map required under Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven

and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

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

(c) If a map or drawing is required to be certified by a qualified [registered] professional engineer, as defined in KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340 [Chapter 322], and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified [registered] professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 [Chapter 322] and 405 KAR 7:040, Section 10.

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

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

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

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

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

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

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

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

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

(2)(a) The first advertisement shall be published on or after:

1. The date the application is submitted to the cabinet; or

2. ~~[-The applicant may elect to begin publication on or after]~~

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

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

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

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in subsection (5) of this section [by the cabinet].

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

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

(b) A map or description which shall:

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

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

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

4. Show the north arrow and map scale, if a map is used; ~~show the north arrow and map scale, if a map is used]~~.

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

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

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except when public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

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

(g) The application number.

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

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

(b) The application number;

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

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

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

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; [~~but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;~~] and

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

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

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

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) [~~Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and~~] and shall

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

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

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

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

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

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

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

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

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal,

state or local government agency or authority to be notified under Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting [requester] at the conference;

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

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

(2) [Except as provided in subsection (3) of this section,] If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

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

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

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

(d) The requirements of 405 KAR 7:091 and 405 KAR 7:092 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and [~~shall be~~] accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

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

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

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

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

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

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

(2) Information pertaining to coal seams, test borings, core samples, or soil samples in applications shall be made available for

inspection and copying to any person with an interest which is or may be adversely affected.

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9. Confidential information shall be limited to the following:

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

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

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

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

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

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

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

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

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

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

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pur-

suant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, or any other state's laws or administrative regulations under SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation. [Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, or any other state's laws or administrative regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection.]

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except when evidence to the contrary is set forth in the permit application, or when the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

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

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

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

(e) [(e)] If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and administrative regulations adopted

pursuant thereto of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

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

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

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

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

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

(4) The proposed permit area is:

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

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

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

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

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

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

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

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

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

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

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;[-]

(8) The applicant has paid all reclamation fees from previous and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant

has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;[-]

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

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

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

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

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

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

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20;[-]

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The applicant;
- (b) Each person who files comments or objections to the permit application;
- (c) Each party to an informal permit conference, if held;
- (d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and
- (e) The field office director of the Division of Mine [Office of Surface Mining] Reclamation and Enforcement.

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

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

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

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

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

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

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

- 1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or
- 2. There are conditions beyond the control and without the fault or negligence of the permittee.

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

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

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

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

(1) General. The following general conditions apply to permits issued by the cabinet:

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

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

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

(2) Right of entry.

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

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

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

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

(3) Environment, public health, and safety.

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

1. ~~[Any]~~ Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

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

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

(c) The permittee shall conduct its operations:

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

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

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

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3, for operations conducted under the permit, except when a stay of the order is granted and remains in effect, the permittee shall either ~~submit to the cabinet the following information, current to the date the order was issued, or~~ notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

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

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

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

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

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

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

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

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

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

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

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

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

(2) Major revisions.

(a) Except as provided in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the cabinet determines that the proposed change is of such scope and nature

that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest which may be adversely affected by the proposed change. Major revisions shall include~~;~~ ~~but shall not be limited to~~:

1. Changes in the postmining land use;

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

3. Variances to approximate original contour requirements;

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

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

6. Proposed experimental practices;

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

8. Incidental boundary revisions that affect new watersheds; and

9. Incidental boundary revisions that include diversions of perennial streams.

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

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet under subsection (2) of this section to be major revisions, or which are not operator change revisions under subsection (6) of this section, shall be deemed minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal. Minor revisions shall be submitted on MPA-04, Application to Revise a Mining Plan ~~[forms prescribed by the cabinet]~~.

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

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

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

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

a. There are no structures or renewable resource lands (under paragraph (b) of the definition of "renewable resource lands") overlying the area;

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

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

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2. Proposals for retention of concrete platforms and small buildings if:
 - a. There is no proposed change to the previously approved postmining land use; and
 - b. The application contains a notarized letter from the surface owner requesting retention of the structure.
3. Proposals to leave the following roads as permanent:
 - a. Excess spoil fill roads;
 - b. Coal mine waste roads;
 - c. Roads to air shafts;
 - d. Roads within 100 feet of an intermittent stream or perennial stream; and
 - e. Roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted.
 - f. Roads to impoundments shall not be considered minor field revisions.
 - g. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.]~~except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator has no responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.]~~
4. Proposals to increase the diameter of culverts used as road crossdrains, not including culverts used for stream crossings, if the proposed culvert is the same type of pipe as the previously approved culvert.
5. Proposals to install additional culverts used as road crossdrains (not including culverts used for stream crossings), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain.
6. Proposals for minor relocation of on-bench sediment control structures (dugouts only) in order to locate the structures at low spots on the same bench on which they were initially proposed, if:
 - a. The drainage area to the structure will remain the same as the original design;
 - b. The proposed location will not cause short-circuiting of the structure; and
 - c. There is no proposed change to the permit boundary.
7. Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities if:
 - a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversions; and
 - b. The diversions have previously been designed to the standards for permanent diversions.
8. Proposals for relocation of topsoil storage areas if:
 - a. There is no proposed change to the permit boundary; and
 - b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.
9. Proposals to substitute plant species if:
 - a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;
 - b. The proposed species will serve the equivalent function of the original species with respect to the previously approved: revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

- c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted.
10. Proposals to utilize hydroseeding for trees instead of planting trees or tree seedlings if:
 - a. Hydroseeding is an appropriate method for the tree species being established; and
 - b. No change in tree species is involved unless concurrently approved under subparagraph 9 of this paragraph.
11. Proposals to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed.
12. Proposals to retain small depressions in the reclaimed area.
13. Proposals required by the cabinet to increase frequency of air blast monitoring.
14. Proposals required by the cabinet to increase frequency of air pollution monitoring.
15. Proposals to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls.
16. Proposals to add a portable coal crusher if:
 - a. The crusher and associated conveying equipment are a completely portable, trailer mounted unit;
 - b. The equipment will be utilized to crush coal only from the permit area on which it is proposed to be located;
 - c. The operation will not generate coal mine waste;
 - d. There is no proposed change to the permit boundary; and
 - e. The equipment will always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds.
17. Proposals to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated.
18. Proposals to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 55.206, 55.218, 55.219, 55.220, and 30 C.F.R. 77.1301(c).
19. Approval for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles if:
 - a. There is no proposed change to the permit boundary; and
 - b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.
20. Proposals for modifications of shared facilities if that modification has already been approved in a revision for one of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision.
21. Proposals to add a hopper to a permitted area if:
 - a. There is no proposed change to the permit boundary; and
 - b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond.
22. Proposals to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills.
23. Proposals to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 through 24.
24. Proposals for incidental boundary revisions for minor off-permit disturbances if:
 - a. The total acreage of the minor off-permit disturbances is no more than one (1) acre combined per proposal;
 - b. The cumulative acreage limitation in subsection (5) of this section is not exceeded;
 - c. The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR Chapter 24;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. Proposals to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

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

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

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

2. Are contiguous to the current permit area;

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

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

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

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

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

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

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

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

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

(5) Size limitations for incidental boundary revisions.

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

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

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

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

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

(6) Operator change revisions.

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

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

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

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

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

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

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants

through ownership or control by Sections 3(1) through (3) of 405 KAR 8:030 and 405 KAR 8:040, except information under Section 3(3) pertaining to abated violations shall not be required, and Section 3(5) of those administrative regulations shall also apply.

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

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised ~~[at least once]~~ in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in Section 8(5) of this administrative regulation. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

1. The permit number;
2. The geographic location of the permit area;
3. The name and business address of the permittee;
4. A statement that the permittee proposes to change the operator approved in the permit;
5. The names and business addresses of the currently approved operator and the proposed operator;
6. The cabinet address to which written comments may be sent under paragraph (g) of this subsection; and
7. The time available for submission of the comments. ~~[by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.]~~

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

(g) The cabinet shall ~~[may]~~ approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this administrative regulation; and
2. Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h) ~~1. [For a complete and accurate application,] The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period under paragraph (f) of this subsection.~~

~~2. [except that] Periods of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 [KAR] prevent a decision from being made within the time period specified in this paragraph, then the cabinet shall have additional time, but not to exceed twenty (20) days from the completion of the notice, to issue its decision[but not to exceed twenty (20) days from the completion of the notice,] hearing and conference procedures.~~

(7) Fees. Applications for revisions shall include a basic fee ~~[of \$375,]~~ except that minor field revisions and operator change revisions shall have no basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction

thereof, shall be included with the application. ~~[except that]~~ No acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

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

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, [in a form and with content as required by the cabinet] and in accordance with this section, and shall include ~~[at a minimum]~~:

- (a) The name and address of the permittee, the term of the renewal requested and the permit number;
- (b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this administrative regulation;
- (c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;
- (d) A renewal fee of ~~\$750~~ [\$375];
- (e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and
- (f) Any additional revised or updated information which may be required by the cabinet.

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

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

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

(6) Approval or denial of renewal applications.

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

1. The terms and conditions of the existing permit are not being satisfactorily met;
2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;
3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;
4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;
5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or
6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

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

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

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

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. No transfer, assignment, or sale of the rights granted under any permit issued pursuant to 405 KAR shall be made with-

out the prior written approval of the cabinet, in accordance with this section.

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

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

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

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

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

4. A processing fee of ~~\$750~~ ~~[\$375]~~.

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

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

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

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

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

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

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

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

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

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

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

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

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability under KAR Title 405 for the reclamation of the areas affected by all prior~~filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior~~ permittees.

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

(2) A fee for an amendments to existing permits shall be submitted to the cabinet as indicated in Section 7(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which ~~is or~~ may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:092, Section 8.

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

(a) Have the right to judicial review as provided in KRS ~~350.0301 and 350.0305~~ ~~[224.085]~~ if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

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

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

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

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

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

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

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

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

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, under the violations review criteria of

the regulatory program at the time the permit was issued an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, November 1991;

(b) "Permittee Information for a Mining Permit", MPA-01, November 1991;

(c) "Operator Information for a Mining Permit", MPA-02, November 1991;

(d) "Technical Information for a Mining Permit", MPA-03, November 1991;

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Application to Revise a Mining Plan, MPA-04, November 1991;

(h) "Update of Permittee or Operator Information", MPA-05, November 1991;

(i) "Change of Corporate Owners, Officers or Directors", MPA-06, November 1991;

(j) "Application to Transfer a Mining Permit", MPA-07, November 1991;

(k) "Revision Application to Change Operator", MPA-08, November 1991;

(l) "Application for Renewal of a Mining Permit", MPA-09, November 1991;

(m) "Application for a Coal Marketing Deferment", MPA-10, November 1991;

(n) "Minor Field Revision Application Form", SME 80, revised September 1991; and

(o) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

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

LEONARD K. PETERS, Secretary

APPROVED: April 15, 2010

FILED WITH LRC: April 20, 2010 at 2 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, Office of the Commissioner, 2 Hudson Hollow Road, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-6764, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins, Regulations Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation applies to surface coal mining operations and specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits. This administrative regulation also applies to reclamation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to entities interested in the coal permitting process in the Commonwealth of Kentucky. This includes those items listed in question (1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350.028 and 350.465 requires the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. The permitting process is detailed in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information to entities interested in a surface coal mining permit as well as information relating to amendments and timelines for those entities that currently have a surface coal mining permit.

(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 increases fees for permitting actions to match legislation passed in the 2010 GA. This amendment also incorporates by reference Ram #124 and allows it to be introduced as a minor field revision.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the fee amounts in regulation to match those passed in HB 283 2010 GA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will introduce the changes to permit fee increases as well as changing a portion of the permitting process by allowing Ram #144 to be an acceptable minor field revision.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide appropriate updates required by statute as well as introducing more detail to the permitting process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact surface mines throughout the Commonwealth of Kentucky. There are 415 coal companies in the Commonwealth with inspectable permits. In Fiscal Year 2009 there were 1,187 permitting actions to which these assessments would have been applicable. The 10-year average is 1,012

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a new permit, amendment, major revision, minor revision, renewal, or transfer will be required to pay additional fees matching the amounts indicated in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is difficult to provide a set cost associated with all entities in the Commonwealth. However, the amounts will be increased to the following amounts:

\$2,500 for an original application;

\$1,750 for an amendment or major revision;

\$750 for a minor revision, renewal or transfer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The increased funding will allow the Division of Mine Permits to hire and retain additional permit reviewers that will increase the rate of permit review. Also the entities listed in question 3 will also be able to introduce RAM #124 as a minor field revision.

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

(a) Initially: There will be no costs associated with introduction of new permit fees. However, hiring new employees will result from the increased fee amounts.

(b) On a continuing basis: The costs associated with this amendment on a continuing basis will be related to retaining the permit reviewers hired with the increased fee amounts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of this administrative regulation will be General Fund and 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: This administrative regulation does increase fees to the amounts listed in question (4)(b).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does increase the fees originally contained within this administrative regulation.

(9) TIERING: Is tiering applied? Yes. Tiering was applied by setting different fee amounts depending on the amount of review required for each permitting action.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 283 2010 GA amended KRS 350.060, 350.070, 350.135, and 350.139.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This

regulation will increase the revenue for the Division of Mine Permits assuming associated General Fund appropriations are maintained at current levels.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation could generate approximately \$800,000 dollars per year depending on the number of permit applications received.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation could generate approximately \$800,000 dollars per year on a continuing basis depending on the number of permit applications received.

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation will be the result of hiring additional permit reviewers.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation in subsequent years will be related to retaining those permit reviewers hired as a result of the increased permit fees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Revenue will increase by approximately \$800,000 annually depending on the number of permit applications received.

Expenditures (+/-): The expenditures will be related to the employees hired as a result of the amendment to this administrative regulation. The costs associated with hiring new personnel is roughly calculated at \$480, 100 in fiscal year 2010 and 994,400 in fiscal year 2011. Half of this cost will be made up in a 50% federal match.

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F.R. Part 730

2. State Compliance Standards. KRS 350.060, 350.062, 350.070, and 350.135.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 773-775, 777, and 778.17

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. This administrative regulation charges a fee for permits review. The federal laws do not include a permit fee.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Commonwealth of Kentucky was given the authority to charge fees for permit review by KRS 350.060, 350.070, and 350.135.

STATEMENT OF EMERGENCY 921 KAR 2:530E

This emergency administrative regulation is necessary to establish the Work Now Kentucky Program (WorkNow KY) within the parameters and timeframe of available funding allotted through federal law, 42 U.S.C. 603, as amended by Pub.L. 111-5, the American Recovery and Reinvestment Act of 2009, and the approved state application. WorkNow KY is a temporary subsidized employment program available to low-income parents and youth through emergency federal funding provided under the Temporary Assistance for Needy Families (TANF) Block Grant through September 30, 2010, and local, state, and private cash and in-kind contributions made available through enhanced public and private partnerships. An ordinary administrative regulation would not allow the agency sufficient time to meet the timeframe, September 30, 2010, to access the available federal funding and implement WorkNow KY. An ordinary administrative regulation will not be filed with the Regulations Compiler, because WorkNow KY will not

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operate past September 30, 2010 in accordance with the federal law authorizing the emergency TANF funding.

STEVEN L. BESHEAR, Governor
JANIE MILLER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (New Emergency Administrative Regulation)

921 KAR 2:530E. Work Now Kentucky Program.

RELATES TO: KRS 194A.060, 205.010(1), Chapter 336, 337, 338, 339, 341, 342, 343, 344, 345, Title 29 C.F.R., 45 C.F.R. 205.50, 261.70, 26 U.S.C. 3101-3128, Title 29 U.S.C., 42 U.S.C. 601-619, Pub.L. 111-5

EFFECTIVE: May 14, 2010

STATUTORY AUTHORITY: KRS 194A.050(1), 205.200(2)

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate all administrative regulations authorized by applicable state laws necessary to operate the programs and fulfill the responsibilities vested in the cabinet or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.200(2) requires the secretary to promulgate administrative regulations prescribing the conditions of eligibility for public assistance in conformity with the Social Security Act, 42 U.S.C. 601-619, and federal regulations. 42 U.S.C. 603 as amended by Pub.L. 111-5, the American Recovery and Reinvestment Act of 2009, provides a state option and additional funding for basic assistance; short-term, nonrecurrent benefits; and subsidized employment for low-income parents and youth. This administrative regulation establishes the Work Now Kentucky Program in accordance with 42 U.S.C. 603 as amended by Pub.L. 111-5.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 205.010(1).

(2) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's "Temporary Assistance for Needy Families" or "TANF" money payment program for a child as defined in 921 KAR 2:006.

(3) "Placement services" means services to match a Work Now Kentucky Program participant with an eligible employer.

(4) "Regular employee" means an unsubsidized employee of an employer that provides a subsidized employment opportunity to a Work Now Kentucky Program participant.

(5) "Subsidized employment" means the establishment of a new job for a Work Now Kentucky Program participant through the expansion of an existing industry or the introduction of a new industry through program services and a subsidy made in accordance with Section 5 of this administrative regulation.

(6) "Work Now Kentucky Program" or "WorkNow KY" means the subsidized employment program in accordance with 42 U.S.C. 603 as amended by Pub.L. 111-5.

Section 2. Participant Eligibility. (1) WorkNow KY shall target:

(a) A youth who:

1. Is sixteen (16) to twenty-four (24) years of age; and

2. Resides with a family member as defined in 921 KAR 2:006;

(b) A parent who resides with an eligible child as defined in 921 KAR 2:006; or

(c) A recipient of K-TAP in accordance with 921 KAR 2:006 and 2:016.

(2) In addition to meeting the criteria listed in subsection (1) of this section, a WorkNow Ky participant shall:

(a) Be:

1. A citizen of the United States; or

2. Considered a qualified alien as defined in 921 KAR 2:006;

(b) Be a resident of Kentucky;

(c) Have a gross income at or below 200 percent of federal poverty level as established annually by the U.S. Department of Health and Human Services; and

(d) Complete and submit the Application for WorkNow KY.

(3) If a youth resides with a parent, the gross income calculated for the youth in accordance with subsection (2)(c) of this section shall include the parent's income.

Section 3. Employer Requirements. For an employer to qualify for participation as a worksite provider for WorkNow KY the employer shall:

(1) Receive revenue from a source in addition to:

(a) WorkNow KY; and

(b) A federal source and its matching funds;

(2) Be registered with the Kentucky Revenue Cabinet;

(3) Have no finding of a violation, or be under investigation for a violation, of a federal, state, or local law governing labor, such as:

(a) Title 29 U.S.C.;

(b) Title 29 of the C.F.R.; or

(c) KRS Chapter 336, 337, 338, 339, 341, 342, 343, or 345;

(d) Not be involved in a workers' strike or lockout;

(5) Reimburse the cabinet's designee for placement services upon request; and

(6) Have a valid WorkNow KY Worksite Provider Agreement executed by the employer and the cabinet or the cabinet's designee prior to the commencement of the WorkNow KY participant's subsidized employment.

Section 4. Certification. (1) Participant eligibility shall be determined upon completion of the Application for WorkNow KY.

(2) The cabinet or its designee shall:

(a) Certify a participant's eligibility; or

(b) Notify an applicant for participation in the WorkNow KY program of the reason for ineligibility and the right to:

1. File a complaint in accordance with Section 6 of this administrative regulation; and

2. Appeal in accordance with Section 7 of this administrative regulation.

(3) A participant in the WorkNow KY shall remain eligible for WorkNow KY through the conclusion of:

(a) The participant's service period in accordance with Section 5(2) of this administrative regulation; or

(b) WorkNow KY in accordance with Section 9 of this administrative regulation, if the service period is determined to extend beyond the program's conclusion.

(4) A former K-TAP recipient shall remain eligible for WorkNow KY until the conclusion of the service period or WorkNow KY if the former K-TAP recipient:

(a) Became ineligible for K-TAP benefits during WorkNow KY participation; and

(b) Continues to meet other eligibility criteria established in Section 2 of this administrative regulation.

Section 5. Program Services. (1) The cabinet's designee shall operate WorkNow KY in accordance with the terms and conditions of the agreement between the cabinet and the cabinet's designee.

(2) A service period for a WorkNow KY participant shall be:

(a) A maximum of twenty-four (24) weeks; and

(b) Based upon the employer's:

1. Satisfaction with the WorkNow KY participant's performance; or

2. Ability to accommodate the WorkNow KY participant in the employer's worksite.

(3) The amount of subsidy for a WorkNow KY participant's employment shall be at:

(a) 100 percent to include:

1. Wages to compensate for the participant's work; and

2. Fringe, including:

a. Taxes under the Federal Insurance Contribution Act or FICA in accordance with 26 U.S.C. 3101-3128; and

b. Worker's compensation in accordance with KRS Chapter 342;

(b) State or federal minimum wage or higher in accordance with KRS 337.275; and

(c) The entry wage for a regular employee in the same position.

(3) A WorkNow KY participant's employment subsidy shall not

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include the following:

(a) Unemployment insurance in accordance with KRS Chapter 341;

(b) Overtime compensation;

(c) Paid holidays;

(d) Annual leave; and

(e) Sick leave.

(4) The cabinet or the cabinet's designee:

(a) Shall reserve the right to contract or not contract with an employer; and

(b) May execute the WorkNow KY Worksite Provider Agreement with an employer that meets the requirements of Section 3(1) through (5) of this administrative regulation.

(5) The WorkNow KY participant and the participant's employer shall complete the WorkNow KY Employee Timesheet for each day of the subsidized employment, as a condition of continued participation and subsidy payment.

(6) A participant in WorkNow KY:

(a) Shall not be subject to discrimination in accordance with KRS Chapter 344 and 920 KAR 1:090;

(b) Shall be subject to the gender, health, and safety standards established under local, state, and federal labor laws that are applicable to any employee, such as:

1. Title 29 U.S.C.;

2. Title 29 C.F.R.; and

3. KRS Chapters 336, 337, 338, 339, 342, 343, and 345;

(c) May fill an established position vacancy unless:

1. An individual was on layoff from the same or any substantially equivalent job within the same organizational unit of the employer;

2. The employer has terminated the employment of a regular employee, or caused an involuntary reduction in the employer's workforce, with the intention of filling any vacancy created with a WorkNow KY participant; or

3. The employer has caused an involuntary reduction to less than full-time in hours, wages, or employment benefits of a regular employee in the same or substantially equivalent job within the same organizational unit of the employer; and

(d) Shall not infringe upon the promotional opportunity of a regular employee in an employment activity.

(7) Unless the appropriate labor organization and employer provide written concurrence before subsidized employment of a WorkNow KY participant is undertaken, an employment activity operated with WorkNow KY funds shall not violate an existing contract for services or collective bargaining agreement.

Section 6. Participant Complaint Processes. (1) The cabinet's designee shall ensure that a WorkNow KY participant dissatisfied with services rendered under WorkNow KY shall be provided an opportunity to file a formal complaint to be heard at the local level.

(2) A WorkNow KY participant may attempt to resolve the issue by submitting a written complaint to the cabinet's designee within ten (10) calendar days after the date of the action or alleged act.

(3) The cabinet's designee shall provide the WorkNow KY participant a written response to the complaint within ten (10) calendar days of receipt of the participant's complaint in accordance with subsection (2) of this section.

(4) The cabinet's designee shall post complaint procedures in each of the designee's offices in which WorkNow KY operates.

(5) A WorkNow KY participant may request an administrative hearing in accordance with Section 7 of this administrative regulation at any time during the complaint process outlined in this section.

(6) A WorkNow KY participant who alleges discrimination may file a complaint in accordance with 920 KAR 1:090.

Section 7. Administrative Hearing Rights. A WorkNow KY participant shall have the same hearing rights of a K-TAP recipient pursuant to 921 KAR 2:055.

Section 8. Regular Employee Complaint Process. In accordance with 45 C.F.R. 261.70, a regular employee who alleges a violation of a safeguard pursuant to Section 5(6) and (7) of this administrative regulation may file a complaint with the:

(1) Employer;

(2) Cabinet or its designee;

(3) U.S. Department of Health and Human Services; or

(4) U.S. Department of Labor.

Section 9. Program Limits. WorkNow KY shall operate:

(1) Contingent upon the approval of the state's application by the U.S. Department of Health and Human Services;

(2) To the extent funding is available; and

(3) No longer than September 30, 2010, in accordance with 42 U.S.C. 603 as amended by Pub.L. 111-5.

Section 10. Confidentiality of Records. Records for WorkNow KY shall be confidential in accordance with KRS 194A.060 and 45 C.F.R. 205.50.

Section 11. Kentucky's State Application. A copy of the WorkNow KY state application may be obtained by submitting a written request to the Commissioner of the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621.

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

(a) "Application for WorkNow KY", edition 2010;

(b) "WorkNow KY Employee Timesheet", edition 2010; and

(c) "WorkNow Kentucky Worksite Provider Agreement", edition 2010.

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

PATRICIA R. WILSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: May 10, 2010

FILED WITH LRC: May 14, 2010 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2010, at 9 a.m. in the Conference Suite C, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2010, five (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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 30, 2010. 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) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearing, Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Work Now Kentucky Program (WorkNow KY) in accordance with 42 U.S.C. 603 as amended by Pub.L. 111-5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the WorkNow KY within the parameters and timeframe of available funding allotted through federal law.

(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 prescribing a tempo-

rary subsidized employment program, WorkNow KY for low-income parents and youth in accordance with 42 U.S.C. 603 as amended by Pub.L. 111-5.

(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 statutes by providing a temporary subsidized employment program for low-income parents and youth in accordance with federal law.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The WorkNow KY is expected to provide up to 9,710 subsidized employment slots, with an average wage of \$9.40 per hour, for approximately 35 hours per week. All participant wages and fringe are subsidized at 100%. Eligible participants and employers will benefit from paid work experience and the expansion of existing industry or the introduction of new industry. WorkNow KY will reduce the idle time of eligible youth. The Cabinet for Health and Family Services and the Education and Workforce Development Cabinet have collaborated to implement this program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The administrative regulation outlines program requirements including eligibility, certification, services, duration of services, documentation, labor protections, confidentiality, and complaint and hearing processes that are available.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): WorkNow KY is available to eligible participants without cost. Employers will realize typical costs associated with doing business; however, these costs will be offset by the subsidy, which includes 100% coverage of the WorkNow KY participant's wages and fringe.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): WorkNow KY will afford eligible participants and employers with subsidized employment to promote paid work experience, a reduction in the idle time of youth, and the expansion of existing industry or the creation of new industry.

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

(a) Initially: The total proposed budget of WorkNow KY is \$58 million of which \$46.4 million will be supported through federal reimbursement and \$11.6 million will be the state's portion of program costs covered by state, local, and private cash or in-kind contributions. No new state funds are necessary to administer the program.

(b) On a continuing basis: There are no ongoing costs to the administrative body due to the temporary nature of WorkNow KY as provided in federal law.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation will be implemented and enforced using temporary, emergency federal funding provided under the Temporary Assistance for Needy Families (TANF) Block Grant and state, local, and private cash or in-kind contributions.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation requires no new fee and no new state funds for

its implementation; rather, the administrative regulation ensures that Kentucky is eligible for temporary, emergency federal funding and complies with related federal law by maximizing private and public partnerships.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 29 C.F.R., 45 C.F.R. 261.70, 26 U.S.C. 3101-3128, Title 29 U.S.C., 42 U.S.C. 601-619, Pub.L. 111-5.

2. State compliance standards. KRS 194A.050(1), 205.200(2).

3. Minimum or uniform standards contained in the federal mandate. Title 29 C.F.R., 45 C.F.R. 261.70, 26 U.S.C. 3101-3128, Title 29 U.S.C., 42 U.S.C. 601-619, Pub.L. 111-5.

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 requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This question is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services and the Education and Workforce Development Cabinet have collaborated to implement this temporary subsidized employment program, WorkNow KY. In addition to the impact to those cabinets with regard to the program's implementation, private and public employers may be eligible for, and benefit from, WorkNow KY.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 205.200(2), Title 29 C.F.R., 45 C.F.R. 261.70, 26 U.S.C. 3101-3128, Title 29 U.S.C., 42 U.S.C. 601-619, Pub.L. 111-5.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will provide for upwards of \$46.4 million in federal TANF funds for the provision of subsidized employment under WorkNow KY.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation governs a temporary subsidized employment program that will not operate past September 30, 2010. There is no direct revenue impact in subsequent years.

(c) How much will it cost to administer this program for the first year? Eleven and six tenths millions (\$11.6M) will be the state portion of program costs. These costs will be covered by state, local, and private cash or in-kind contributions. No new state funds are necessary to administer the program.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation governs a temporary subsidized employment program that will not be in operation past September 30, 2010. There is no cost to administer the program in subsequent years.

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Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, May 11, 2010)

103 KAR 3:010. General administrative forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 64.012, 131.010(9), 131.020, 131.030, 131.041, 131.051, 131.061, 131.081~~[131.041-131.081]~~, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), (10), (11), 131.150, 131.155, 131.170, 131.181, 131.183, 131.190, 131.190(1), 131.240, 131.340, 131.500, 131.500(1), (2), (3), (9), (10), 131.510(1), (2)(a), (2)(b), 131.530, 131.540, 132.020, 132.130-132.160, 132.180~~[132.043~~, 132.060-132.090, 132.130-132.180], 132.190, 132.200, 132.220, 132.227, 132.230, 132.260, 132.270~~[132.215~~, 132.216, 132.220~~[132.270]~~, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510, 132.820, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.020, 134.390, 134.420, 134.430, 134.440, 134.500, 134.580(4), 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, ~~[136.030, 136.040,]~~ 136.050, 136.070, 136.071, 136.0704, 136.090, 136.100, 136.115-136.180, ~~[136.181-136.187,]~~ 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.392, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 138.448, 138.885, 139.185, 139.200, 139.240, 139.330, 139.390, 139.550, 141.0401(5), 141.0401(6), 141.050(4), 141.210, 141.235, 141.340(2), ~~[139.560,]~~ 142.010, 142.050, 142.321, 142.327, 142.357, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, ~~[144.120(4),]~~ 154.22-050, 154.22-060, 154.22-070, 154.23-010, 154.24-110, 154.24-130, 154.26-090, 154.28-090, 154.34-010, ~~[154.45-090~~, 154.45-100, 154.45-110(1)], 155.170, 160.613-160.617, 160.6154(3), 205.745, 209.160, 224.01-310(1), ~~[224.60,]~~ 234.321, 234.370, 243.710, 243.720, 243.730, 243.850, 243.884, 248.756(2), 299.530, 304.4-030, 304.11-050, 304.49-220, 351.175, 395.470(3), 413.120

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the general administration of taxes by the Department of Revenue and not limited to a specific tax.

Section 1. Administrative - Required Forms. (1) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

(2) Revenue Form 10A020, "Waiver of Appeal Rights", shall be completed by a taxpayer to reopen an audit that has become final if the taxpayer has failed to timely file a protest with the Department of Revenue.

(3) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", shall be completed by taxpayers to authorize the Department of Revenue to move funds by electronic means from taxpayer accounts to the Department of Revenue as payment for taxes.

(4) Revenue Form 10A071, "EFT Bank Change", shall be completed by taxpayers who are registered as EFT ACH Debit filers to notify the department of a bank account change.

(5) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be used by taxpayers to voluntarily apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;

(b) Corporation income;

(c) Sales and use;

(d) Consumer's use;

(e) Motor vehicle tire fee;

(f) Transient room;

(g) Limited liability entity; and

(h) Coal severance and processing.

(6) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", shall be sent by the department's registration compliance section to taxpayers for the taxpayers to use to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;

(b) Corporation income;

(c) Sales and use;

(d) Consumer's use;

(e) Motor vehicle tire fee;

(f) Transient room;

(g) Limited liability entity; and

(h) Coal severance and processing.

(7) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation income, sales and use, consumer's use, motor vehicle tire fee, transient room, limited liability entity, and coal severance and processing tax accounts.

(8) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", shall provide instructions for the proper completion of Revenue Form 10A100-CS, "Kentucky Tax Registration Application", which is used to apply for employer's Kentucky withholding, corporation income, sales and use, consumer's use, motor vehicle tire fee, transient room, limited liability entity, and coal severance and processing tax accounts.

(9) Revenue Form 10F060, "Electronic Funds Transfer Program: ACH Credit Guide~~[Automated Clearing House Credit Instructions and Guidelines]~~", shall provide information on the specific requirements of the Department of Revenue's Credit Method of tax remittance for the Electronic Funds Transfer Program.

(10) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", shall provide instructions to the taxpayer on how to authorize the Department of Revenue to electronically debit a taxpayer controlled account in an Automated Clearing House participating financial institution for the amount which the taxpayer reports to the state's data collection service.

(11) Revenue Form 10F100, "Your Rights As a Kentucky Taxpayer", shall provide the public with information describing taxpayer rights provided by KRS Chapters 131, 133 and 134.

~~(12)~~~~(140)~~ Revenue Form 12A012, "Receipt of Seized Property", shall be presented for execution to the taxpayer receiving returned property from the Kentucky Department of Revenue that was previously seized for failure to pay taxes in order to establish documentation that the property was returned to the taxpayer.

~~(13)~~~~(141)~~ Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement Application", shall be presented for execution to persons requesting to settle their tax liabilities for less than the delinquent tax liability based upon doubt as to collectability or doubt as to liability.

~~(14)~~~~(142)~~ Revenue Form 12A104, "Notice of Seizure", shall be presented to the owner or officer of the entity from which the Kentucky Department of Revenue is seizing property for failure to pay taxes owed to the Commonwealth.

~~(15)~~~~(143)~~ Revenue Form 12A107, "Notice of Sale", shall be presented to the owner of seized property, the newspaper with the highest circulation for that area, and posted at the courthouse, at three (3) other public places within the county, and where the seizure was made, for the purpose of notifying the property owner, and advertising to the public the sale of the seized property.

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(16)[(14)] Revenue Form 12A109-1, "Release of Bank Levy", shall be presented to the bank on which the levy was served for the purpose of releasing the seized property.

(17)[(15)] Revenue Form 12A109-2, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property.

(18)[(16)] Revenue Form 12A109-3, "Release of Levy", shall be presented to the party on which the levy was served for the purpose of releasing the seized property related to child support.

(19)[(17)] Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy.

(20)[(18)] Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", shall be presented to an employer for the purpose of releasing a wage levy related to child support.

(21)[(19)] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", shall be presented to anyone who makes a proper application for a lien release on a specific piece of property if the Department of Revenue's lien attaches no equity or if the equity that the lien encumbers is paid to the Department of Revenue.

(22)[(20)] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", shall be presented to anyone who makes proper application requesting that the Department of Revenue subordinate its lien position to a new mortgage and demonstrates that the subordination is in the Commonwealth's best interest.

(23)[(21)] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", shall be presented to anyone who requests to have the Department of Revenue subordinate its lien position to a new mortgage.

(24)[(22)] Revenue Form 12A503, "Application for Specific Lien Release", shall be presented to anyone who requests that the Department of ~~Revenue~~[Tax] release its tax lien so that a specific piece of property can be sold.

(25)[(23)] Revenue Form 12A504, "Personal Assessment of Corporate Officer or LLC Manager", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

(26)[(24)] Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", shall be presented to the corporate officers or LLC managers for the purpose of entering into a payment agreement to pay the trust taxes owed to the Commonwealth, and the terms of the payment agreement shall extend past the statutory period for assessing responsible corporate officers or LLC managers.

(27)[(25)] Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", shall be presented to the taxpayer for the purpose of extending the period in which the liability can be collected.

(28)[(26)] Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy on Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.

(29)[(27)] Revenue Form 12A508-1, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for trust taxes owed to the Commonwealth.

(30)[(28)] Revenue Form 12A508-2, "Notice of Tax Due", shall be presented for the purpose of assessing an officer of a corporation who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(31)[(29)] Revenue Form 12A508-3, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for trust taxes owed to the Commonwealth.

(32)[(30)] Revenue Form 12A508-4, "Notice of Tax Due", shall be presented for the purpose of assessing a manager or partner of a limited liability company who is personally liable for Gasoline and Special Fuels taxes owed to the Commonwealth.

(33)[(31)] Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of

the trust taxes owed to the Commonwealth.

(34)[(32)] Revenue Form 12A517, "Notice of Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(35)[(33)] Revenue Form 12A517-1, "Notice of Child Support Lien", shall be presented to the county clerk for appropriate recording and to the taxpayer against whom the lien is filed for the purpose of filing and recording the tax lien in the county clerk's office and giving notification to the taxpayer.

(36)[(34)] Revenue Form 12A518, "Certificate of Release of [Tax] Lien", shall be presented to the county clerk and to the taxpayer against whom the tax lien is filed for the purpose of releasing the lien and notifying the taxpayer of the release.

(37)[(35)] Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", shall be presented to the county clerk and to the taxpayer against whom the child support lien is filed for the purpose of releasing the lien and notifying the obligor of the release.

(38)[(36)] Revenue Form 12A638, "Statement of Financial Condition for Individuals", shall be presented to individuals requesting to make payments or settle their tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(39)[(37)] Revenue Form 12A638(I), "Instructions for Completing Statement of Financial Condition for Individuals", shall provide instructions for completing Revenue Form 12A638.

(40)[(38)] Revenue Form 12A639, "Statement of Financial Condition for Businesses", shall be presented to business owners requesting to make payments or settle a tax liability to the Commonwealth for the purpose of establishing the financial ability to make payments or settle.

(41)[(39)] Revenue Form 12A639(I), "Instructions for Completing Statement of Financial Condition for Businesses", shall provide instructions for completing Revenue Form 12A639.

(42)[(40)] Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes taxes to the Kentucky Department of Revenue.

(43)[(41)] Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", shall be presented to employers for the purpose of levying wages from an employee who owes child support.

(44)[(42)] Revenue Form 12B020, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of taxpayers who owe taxes to the Kentucky Department of Revenue.

(45)[(43)] Revenue Form 12B020-2, "Notice of Levy", shall be presented to banks for the purpose of levying bank accounts of obligors who owe child support.

(46)[(44)] Revenue Form 21A020, "Request for Copy of Tax Refund Check", shall be completed and submitted to the Department of Revenue in order to obtain a copy of a cashed refund check.

(47) Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", shall be presented to temporary and transient vendors who do not have a permanent place of business for the purpose of remitting tax on a nonpermit basis, as required by 103 KAR 25:060.

(48)[(45)] Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", shall be used to register temporary vendors who do business in the Commonwealth of Kentucky.

(49) Revenue Form 30A872, "Record of Money Receipt Issued", shall be used by Department of Revenue field personnel to provide written documentation of acceptance of cash payments.

(50)[(46)] Revenue Form 31A001, "Vendor Contact Authorization", shall be used by a Department of Revenue representative to obtain permission from a taxpayer to contact his vendors concerning the issuance of exemption certificates.

(51)[(47)] Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the auditor to acknowledge payment from taxpayers of taxes determined to be tentatively due at the time of an audit.

(52) Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", shall be used by auditors at the Ashland Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(53) Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", shall be used by auditors at the Bowling Green Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(54) Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Central Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(55) Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", shall be used by auditors at the Corbin Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(56) Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", shall be used by auditors at the Hopkinsville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(57) Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", shall be used by auditors at the Louisville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(58) Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", shall be used by auditors at the Northern Kentucky Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(59) Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", shall be used by auditors at the Owensboro Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(60) Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", shall be used by auditors at the Paducah Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(61) Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", shall be used by auditors at the Pikeville Taxpayer Service Center to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(62)[(48)] Revenue Form 31A011, "Taxpayer Data Questionnaire", shall be used by auditors to gather information regarding a taxpayer's capability to provide electronic data as requested under KRS 131.240.

(49)] Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Ohio and Indiana.

(63)[(60)] Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", shall be used to establish possible taxing jurisdiction for sales and use tax and income tax for the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia and West Virginia.

(64)[(64)] Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", shall be used by Department of Revenue representatives to obtain permission from a taxpayer to release tax returns.

(65)[(52)] Revenue Form 31A050, "Electronic Transmittal Authorization", shall be used by auditors to seek permission from a taxpayer to transmit audit results electronically.

(66)[(63)] Revenue Form 31A115, "Agreement Fixing Test Periods", shall be used by auditors to establish certain test periods when conducting an[and] audit.

(67)[(64)] Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain sales, use or severance tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(68)[(65)] Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License

Tax", shall be used by auditors to establish taxable periods to be held open for audit and date of assessment.

(69)[(56)] Revenue Form 31A685, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(70)[(57)] Revenue Form 31A725, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(71)[(58)] Revenue Form 31F006, "Southeastern States Information Exchange Program", shall be used to provide information to taxpayers concerning the information exchange program between the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, Virginia, and West Virginia.

(72)[(59)] Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", shall be used as instructions for taxpayers who submit tax records in an electronic format.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Revenue Form 10A001, "Request to Inspect Public Records", February 1997;

(b) Revenue Form 10A020, "Waiver of Appeal Rights", January 2001;

(c) Revenue Form 10A070, "Authorization Agreement for Electronic Funds Transfer", January 2008;

(d) Revenue Form 10A071, "EFT Bank Change", June, 2009;

(e) Revenue Form 10A100, "Kentucky Tax Registration Application", April 2009[June 2008];

(f) Revenue Form 10A100-CS, "Kentucky Tax Registration Application", April 2009[June 2008];

(g) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", April 2009[June 2008];

(h) Revenue Form 10A100-CS(I), "Instructions for Kentucky Tax Registration Application", April 2009[June 2008];

(i) Revenue Form 10F060, "Electronic Funds Transfer Program: **ACH Credit Guide**", April 2006[Automated Clearing House Credit Instructions and Guidelines, November 1998];

(j) Revenue Form 10F061, "Electronic Funds Transfer Program: Debit Guide", December 2008;

(k) Revenue Form 10F100, "Your Rights as a Kentucky Taxpayer", September 2008;

(l)[(4)] Revenue Form 12A012, "Receipt of Seized Property", November 2006;

(m)[(4)] Revenue Form 12A018, "Kentucky Department of Revenue Offer in Settlement **Application**", March 2009[August 2004];

(n)[(4)] Revenue Form 12A104, "Notice of Seizure", October 1982;

(o)[(4)] Revenue Form 12A107, "Notice of Sale", January 2000;

(p)[(4)] Revenue Form 12A109-1, "Release of Bank Levy", September 2004;

(q)[(4)] Revenue Form 12A109-2, "Release of Levy", January 2000;

(r)[(4)] Revenue Form 12A109-3, "Release of Levy", January 2008;

(s)[(4)] Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", September 2004;

(t)[(4)] Revenue Form 12A110-1, "Release of Levy on Wages, Salary, and Other Income", January 2008;

(u)[(4)] Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", June 2006;

(v)[(4)] Revenue Form 12A501, "Certificate of Subordination of Kentucky Finance and Administration Tax Lien", June 2006;

(w)[(4)] Revenue Form 12A502, "Application for Certificate of Subordination of Kentucky Tax Lien", October 2006;

(x)[(4)] Revenue Form 12A503, "Application for Specific Lien Release", October 2006;

(y)[(4)] Revenue Form 12A504, "Personal Assessment of Cor-

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porate Officer or LLC Manager", June 2003;

~~(z)(x)~~ Revenue Form 12A505, "Waiver Extending Statutory Period of Assessment of Corporate Officer or LLC Manager", June 2003;

~~(aa)(y)~~ Revenue Form 12A506, "Waiver Extending Statutory Period for Collection", June 2003;

~~(bb)(z)~~ Revenue Form 12A507, "Table for Figuring the Amount Exempt from Levy on Wages, Salary, and Other Income", November 2006;

~~(cc)(aa)~~ Revenue Form 12A508-1, "Notice of Tax Due", January 2008;

~~(dd)(bb)~~ Revenue Form 12A508-2, "Notice of Tax Due", January 2008;

~~(ee)(cc)~~ Revenue Form 12A508-3, "Notice of Tax Due", November 2008;

~~(ff)(dd)~~ Revenue Form 12A508-4, "Notice of Tax Due", November 2008;

~~(gg)(ee)~~ Revenue Form 12A514, "Questionnaire for Persons Relative to a Notice of Assessment", August, 1996;

~~(hh)(ff)~~ Revenue Form 12A517, "Notice of Lien", November 2008;

~~(ii)(gg)~~ Revenue Form 12A517-1, "Notice of Child Support Lien", November 2008;

~~(jj)(hh)~~ Revenue Form 12A518, "Certificate of Release of Lien", November 2008;

~~(kk)(ii)~~ Revenue Form 12A518-1, "Certificate of Release of Child Support Lien", January 2008;

~~(ll)(jj)~~ Revenue Form 12A638, "Statement of Financial Condition for Individuals", July 2004;

~~(mm)(kk)~~ Revenue Form 12A638(l), "Instructions for Completing Statement of Financial Condition for Individuals", August 2004;

~~(nn)(ll)~~ Revenue Form 12A639, "Statement of Financial Condition for Businesses", August 2004;

~~(oo)(mm)~~ Revenue Form 12A639(l), "Instructions for Completing Statement of Financial Condition for Businesses", August 2004;

~~(pp)(nn)~~ Revenue Form 12B019, "Notice of Levy on Wages, Salary, and Other Income", September 2004;

~~(qq)(oo)~~ Revenue Form 12B019-1, "Notice of Levy on Wages, Salary, and Other Income", January 2008;

~~(rr)(pp)~~ Revenue Form 12B020, "Notice of Levy", September 2004;

~~(ss)(qq)~~ Revenue Form 12B020-2, "Notice of Levy", January 2008;

~~(tt)(rr)~~ Revenue Form 21A020, "Request for Copy of Tax Refund Check", October 2006;

~~(uu)~~ Revenue Form 30A005, "Temporary Vendor's Sales Tax Permit", September 1998;

~~(vv)(ss)~~ Revenue Form 30A006, "Temporary Vendor Sales and Use Tax Return/Processing Document", December 2006;

~~(ww)~~ Revenue Form 30A872, "Record of Money Receipt Issued", February 2008;

~~(xx)(tt)~~ Revenue Form 31A001, "Vendor Contact Authorization", July 2006;

~~(yy)(uu)~~ Revenue Form 31A004, "Auditor Record of Money Receipt Issued", July 2006;

~~(zz)~~ Revenue Form 31A011-ASH, "Taxpayer Data Questionnaire", March 2009[2000];

~~(aaa)~~ Revenue Form 31A011-BG, "Taxpayer Data Questionnaire", March 2009;

~~(bbb)~~ Revenue Form 31A011-CKY, "Taxpayer Data Questionnaire", March 2009;

~~(ccc)~~ Revenue Form 31A011-COR, "Taxpayer Data Questionnaire", March 2009;

~~(ddd)~~ Revenue Form 31A011-HOP, "Taxpayer Data Questionnaire", March 2009;

~~(eee)~~ Revenue Form 31A011-LOU, "Taxpayer Data Questionnaire", March 2009;

~~(fff)~~ Revenue Form 31A011-NKY, "Taxpayer Data Questionnaire", March 2009;

~~(ggg)~~ Revenue Form 31A011-OWEN, "Taxpayer Data Questionnaire", March 2009;

~~(hhh)~~ Revenue Form 31A011-PAD, "Taxpayer Data Questionnaire", March 2009;

~~(iii)~~ Revenue Form 31A011-PIKE, "Taxpayer Data Questionnaire", March 2009;

~~(jjj)(vv)~~ Revenue Form 31A011, "Taxpayer Data Questionnaire", October 2008;

~~(www)~~ Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", July 2006;

~~(kkk)(xx)~~ Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", July 2006;

~~(lll)(yy)~~ Revenue Form 31A020, "Office of Field Operations Request for Copy of Tax Return(s)", July 2006;

~~(mmm)(zz)~~ Revenue Form 31A050, "Electronic Transmittal Authorization", April 2008;

~~(nnn)(aaa)~~ Revenue Form 31A115, "Agreement Fixing Test Periods", April 2008;

~~(ooo)(bbb)~~ Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", July 2006;

~~(ppp)(ccc)~~ Revenue Form 31A150, "Agreement Fixing Period of Limitation Upon Assessment of Utility Gross Receipts License Tax", May 2008;

~~(qqq)(ddd)~~ Revenue Form 31A685, "Authorization to Examine Bank Records", May 1985;

~~(rrr)(eee)~~ Revenue Form 31A725, "Statute of Limitations Agreement", July 2006;

~~(sss)(fff)~~ Revenue Form 31F006, "Southeastern States[State] Information Exchange Program", February 2005; and

~~(ttt)(ggg)~~ Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program Brochure", June 2006.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 p.m.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: March 8, 2010

FILED WITH LRC: March 11, 2010 at 4 p.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

FINANCE AND ADMINISTRATION CABINET Department of Revenue Office of Property Valuation (As Amended at ARRS, May 11, 2010)

103 KAR 3:030. Property and Severance Forms manual.

RELATES TO: KRS 42.470, 61.870-61.884, 131.020, 131.030, 131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130, 131.130(3), 131.155, 131.181, 131.183, 131.190, 131.340, 131.500, 131.500(1), (2), (3), (10), 131.510(1), (2)(a), 131.540, 132.020, 132.130-132.180, 132.190, 132.200, 132.220-132.270, 132.290, 132.310, 132.320, 132.360, 132.450, 132.487, 132.510, 132.820, 132.825, 132.990, 133.045, 133.110, 133.120, 133.130, 133.240, 134.015, 134.020, 134.122, 134.129, 134.390, 134.420, 134.430, 134.440, 134.500, 134.590, 134.800, 134.805, 134.810, 134.815, 134.820, 134.825, 134.830, 135.010, 135.020, 135.050, 136.020, 136.050, 136.115-136.180, 136.1802-136.1806, 136.1873, 136.310, 136.320, 136.330, 136.335, 136.377, 136.545, 136.575, 136.600-136.660, 137.130, 137.160, 143.030(1), 143.037, 143.040, 143.050, 143.060(1), 143.085, 143.990, 143A.010, 143A.030, 143A.035, 143A.037, 143A.080, 143A.090, 143A.100(1), 143A.991, Ky. Const. Sec. 170

STATUTORY AUTHORITY: KRS 131.130(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required Revenue Forms used in the administration

of Property and Severance Taxes by the Department of Revenue.

Section 1. Property Tax - Required Forms. (1) Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2010[2009]", shall be the packet of files and instructions relating to Revenue Form 61A200 for use by public service companies reporting company name, location and other pertinent filing information with the Department of Revenue.

(2) Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2009[2008]", shall be filed by public service companies reporting company name, location, and other pertinent filing information with the Department of Revenue.

(3) Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", shall be filed by public service companies with the Department of Revenue, reporting the System and Kentucky original cost, total depreciation and depreciated cost for all operating and nonoperating property types as of the end of the taxable year.

(4) Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", shall be filed by public service companies with the Department of Revenue, reporting the assessed value of all Kentucky apportioned and regular licensed motor vehicles, railroad car lines and commercial watercraft as of the end of the year.

(5) Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", shall be filed by public service companies with the Department of Revenue, reporting a financial statement (balance sheet) as of December 31 for the system operating unit including Kentucky.

(6) Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", shall be filed by public service companies with the Department of Revenue, reporting a financial statement (income statement) for twelve (12) months ending December 31 for the system operating unit including Kentucky.

(7) Revenue Form 61A200(E), "Filing Extension Application", shall be used by public service companies to request an extension of time to file the public service company tax return.

(8) Revenue Form 61A200(G), "Report of Capital Stocks", shall be filed by public service companies with the Department of Revenue, reporting an analysis of their capital stocks as of the end of the taxable year.

(9) Revenue Form 61A200(H), "Report of Funded Debt", shall be filed by public service companies with the Department of Revenue reporting an analysis of their debt as of the end of the taxable year.

(10) Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting a summary of the business activity within each taxing district.

(11) Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", shall be filed by public service companies with the Department of Revenue reporting a summary of the amount of operating and nonoperating property owned or leased in this state, by each county, city and special district.

(12) Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue, reporting an inventory of the amount and kind of operating property, owned or leased, located in this state, for each county, city and special taxing district.

(13) Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of nonoperating property owned or leased, located in this state, for each county, city and special taxing district.

(14) Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for All Interstate Companies", shall be filed by interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(15) Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies",

shall be filed by interstate railroad and sleeping car companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(16) Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased real property and the terms of the lease by taxing district.

(17) Revenue Form 61A200(N2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", shall be filed by public service companies with the Department of Revenue, reporting all leased personal property and the terms of the lease by taxing district.

(18) Revenue Form 61A200(N3), "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by public service companies with the Department of Revenue reporting the annual operating lease payments paid during the calendar year.

(19) Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Department of Revenue reporting the name and address of the company and the mileage in Kentucky.

(20) Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", shall be filed by landfills with the Department of Revenue, reporting historic, current, and projected operational information.

(21) Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", shall be filed by public service companies with the Department of Revenue, reporting certified pollution control equipment, the original cost and the net book value.

(22) Revenue Form 61A200(U), "Industrial Revenue Bond Property", shall be filed by a public service company to list real and tangible personal property purchased with an industrial revenue bond.

(23) Revenue Form 61A202, "2010[2009] Public Service Company Property Tax Return for Railroad Car Line", shall be filed by railroad car line companies with the Department of Revenue, classifying the railcars by type and reporting cost, age, and mileage for each railcar.

(24) Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers 2010[2009]", shall be the packet of files and instructions relating to Revenue Form 61A206 for use by commercial air passenger and air freight carriers reporting company name, location, and other pertinent information with the Department of Revenue.

(25) Revenue Form 61A206, "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", shall be filed by all commercial air passenger and air freight carriers reporting taxpayer name, location, and other pertinent information with the Department of Revenue.

(26) Revenue Form 61A206(A), "Filing Extension Application for Public Service Company Property Tax Return", shall be used by commercial air passenger and air freight carriers to request an extension of time to file the commercial air passenger and air freight carriers tax return.

(27) Revenue Form 61A206(B), "Report of Kentucky Registered and Licensed Motor Vehicles", shall be filed by commercial air passenger and air freight carriers to report vehicles, both owned and leased, registered within the state of Kentucky as of December 31.

(28) Revenue Form 61A206(C), "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", shall be used by all commercial, passenger, or cargo airlines conducting business in Kentucky to provide the Department of Revenue with yearend financial statements, a complete annual report, and a complete 10K report (FCC annual report) for the twelve (12) month period ending December 31.

(29) Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", shall be filed by commercial air passenger and air freight carriers providing a complete listing of fleet aircraft owned and capital-leased as of December 31.

(30) Revenue Form 61A206(D-2), "Report of System Aircraft Fleet", shall be filed by commercial air passenger and air freight

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carriers providing a complete listing of operating leased fleet aircraft.

(31) Revenue Form 61A206(D-3), "Report of System Aircraft Fleet", shall be filed by all commercial air passenger and air freight carriers providing a complete listing of all fleet managed aircraft and aircraft held for resale or nonoperating.

(32) Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", shall be filed by all commercial air passenger and air freight carriers providing a listing of all arrivals, departures, and ground time at all Kentucky airports and heliports.

(33) Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", shall be filed by all commercial air passenger and air freight carriers listing property factors and business factors.

(34) Revenue Form 61A206(G), "Report of Funded Debt", shall be filed by all commercial air passenger and air freight carriers listing all debt obligations, both long term and short term, by class and obligation.

(35) Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all real property in Kentucky leased on an operating lease basis.

(36) Revenue Form 61A206(I), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all personal property in Kentucky leased on an operating lease basis.

(37) Revenue Form 61A206(J), "Summary Report of System and Kentucky Operating Lease Payments", shall be filed by all commercial air passenger and air freight carriers listing all annual operating lease payments.

(38) Revenue Form 61A206(K), "Report of Owned Real Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all real property owned in Kentucky.

(39) Revenue Form 61A206(L), "Report of Owned Personal Property Located in Kentucky By Taxing District", shall be filed by all commercial air passenger and air freight carriers listing all personal property owned in Kentucky.

(40) Revenue Form 61A206(M), "Summary Report of Total System and Kentucky Operations", shall be filed by all commercial air passenger and air freight carriers listing all real and personal property owned and leased, providing the original cost, depreciation, and depreciated cost values.

(41) Revenue Form 61A206(N), "Industrial Revenue Bond Property", shall be filed by all commercial air passenger and air freight carriers listing real and tangible property purchased with an industrial revenue bond.

(42) Revenue Form 61A206(O), "Public Service Company Sales", shall be filed by commercial air passenger and air freight carriers listing any assets bought or sold during the year.

(43) Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return 2010[2009]", shall be the packet of files and instructions relating to Revenue Form 61A207 for use by commercial watercraft owners both resident and nonresident, reporting the watercraft's book value, original cost and total and Kentucky route mileage with the Department of Revenue.

(44) Revenue Form 61A207, "2010[2009] Commercial Watercraft Personal Property Tax Return", shall be filed by all commercial watercraft owners, both resident and nonresident, reporting the watercraft's book value, original cost, and total and Kentucky route mileage with the Department of Revenue.

(45) Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all owned vessels (both available and operating) in their fleet as of January 1, 2010[2009].

(46) Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", shall be filed with the Department of Revenue, reporting all owned vessels that are in possession of other persons, companies, corporations, operators, or charterers as of January 1, 2010[2009].

(47) Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", shall be filed with the Department of Revenue, reporting all nonowned vessels (both available and operating)

in their fleet as of January 1, 2010[2009].

(48) Revenue Form 61A207(D), "Commercial Watercraft Valuation Worksheet", shall be filed with the Department of Revenue, reporting the original cost, cost of rebuilds and the cost of major improvements of all owned and nonowned vessels.

(49) Revenue Form 61A207(E), "Report of Kentucky Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on Kentucky waterways.

(50) Revenue Form 61A207(F), "Report of System Route Miles", shall be filed with the Department of Revenue reporting the system route miles traveled on United States waterways.

(51) Revenue Form 61A209, "Public Service Company Sales", shall be filed by public service companies with the Department of Revenue, reporting any full or partial sale or purchase of assets of the public service company.

(52) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky.

(53) Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs~~[for Enclosed Form 61A211]~~", shall provide instructions for completing Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs".

(54) Revenue Form 61A230, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of the final assessment of the public service company property.

(55) Revenue Form 61A240, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of a tentative assessment of the public service company property. This notice shall inform the taxpayer of the protest period.

(56) Revenue Form 61A250, "Notice of Assessment", shall be sent by the Department of Revenue to the taxpayer notifying the taxpayer of his claim of assessed value on public service company property.

(57) Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.

(58) Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", shall provide instructions for completing Revenue Form 61A255, "Public Service Company Property Tax Statement".

(59) Revenue Form 61A500(P), "2010[2009] Personal Property Tax Forms and Instructions for Communications Service Providers and Multi-channel Video Programming Service Providers", shall be the packet of files and instructions relating to Revenue Form 61A500 for use by telecommunication, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(60) Revenue Form 61A500, "2010[2009] Tangible Personal Property Tax Return for Communication Service Providers and Multichannel Video Program Service Providers", shall be filed by telecommunications, satellite, and cable television companies, reporting all tangible personal property with the Department of Revenue.

(61) Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky original cost, depreciation, and net book value of each class of tangible personal property.

(62) Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky Original Cost by taxing jurisdiction.

(63) Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky reported value by taxing jurisdiction.

(64) Revenue Form 61A500(K), "Personal Tangible Property

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Listing by Taxing District", shall be filed by telecommunication, satellite and cable television companies with the Department of Revenue and shall contain an inventory of the amount and kind of personal property owned and located in Kentucky by taxing jurisdiction.

(65) Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of nonresident watercraft personal property.

(66) Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Department of Revenue to report inventory as of January 1.

(67) Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.

(68) Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", shall be filed by distilleries with the Department of Revenue, reporting average per barrel storage cost.

(69) Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age, and the price.

(70) Revenue Form 61A508-S4, "Schedule 4", shall be filed by distilleries with the Department of Revenue, reporting the fair cash value of bulk inventory summarized on Form 61A508.

(71) Revenue Form 61A508-S5, "Schedule 5", shall be filed by distilleries with the Department of Revenue, reporting the fair cash values of case goods summarized on Form 61A508.

(72) Revenue Form 61A509, "Distilled Spirits or Telecoms [Telecoms] Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of distilled spirits and telecom personal property.

(73) Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment", shall inform taxpayers of the protest procedures on Commercial Watercraft assessments.

(74) Revenue Form 61F008, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Railroad Car Line assessments.

(75) Revenue Form 61F009, "Notification Protesting Your Assessment", shall inform taxpayers of the protest procedures on Public Service Company Property Tax assessments.

(76) Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assessed Companies-Assessment of Distilled Spirits in Bonded Warehouses"["Notification Protesting Your Assessment (Distilled Spirits)"], shall inform taxpayers of the protest procedures on Distilled Spirits assessments.

(77) Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.

(78) Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", shall be issued by the Department of Revenue to notify motor vehicle and boat owners of their delinquent ad valorem property tax liabilities.

(79) Revenue Form 62A008, "Motor Vehicle Tax Notice", shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities.

(80) Revenue Form 62A009, "Map Sales Invoice", shall be provided to the customer by the Department of Revenue as a receipt for payment of maps purchased.

(81) Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.

(82) Revenue Form 62A013, "Application for Assessment Moratorium Certificate", shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administering agency of the county in which the property is located, thirty (30) days prior to restoration or repair.

(83) Revenue Form 62A015, "2010[2009] Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted

annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

(84) Revenue Form 62A016, "Quietus", shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(85) Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills", shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and determine the county clerk's compensation for making tax bills.

~~(86) Revenue Form 62A018, "School Taxing Jurisdiction--Motor Vehicle and Watercraft Property Tax Rate", shall be completed by the Department of Revenue to list the motor vehicle and watercraft property tax rates for each school taxing jurisdiction.~~

~~(87) Revenue Form 62A019, "Distributions of Ad Valorem Tax to the Fiscal Courts", shall be completed by the Department of Revenue to list the fiscal year ad valorem property tax distributions to the various county fiscal courts.~~

~~(88)]~~ Revenue Form 62A020, "Intercounty Property Tax Collections", shall be completed by the Department of Revenue to list distributions of ad valorem property tax made to individual taxing jurisdictions.

~~(87)]~~(89) Revenue Form 62A023, "Application for Exemption from Property Taxation", shall be filed by organizations, other than institutions of religion seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filed with the Department of Revenue.

~~(88)]~~(90) Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations", shall be filed by institutions of religion seeking a property tax exemption under Ky. Const. Sec. 170. This form shall be filed with the Department of Revenue.

~~(89)]~~(91) Revenue Form 62A030, "Request for Reproduction of PVA Public Records and Contract for Commercial Users", shall be submitted to request copies of documents required to be retained by the PVA.

~~(90)]~~(92) Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat/Trailer Property Tax", shall be completed by the owner of a vehicle, boat, or trailer, at the property valuation administrator's office in order to correct owner or vehicle, boat, or trailer information in the ad valorem tax computer system. The PVA shall present the form to the county clerk when a tax refund is authorized.

~~(91)]~~(93) Revenue Form 62A200(P), "2010[2009] Unmined Coal Property Tax Information Return", shall be the packet of files and instructions relating to Revenue Form 62A200 for use by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

~~(92)]~~(94) Revenue Form 62A200, "2010[2009] Unmined Coal Property Tax Information Return", shall be filed by owners or lessees of unmined minerals, reporting filer information with the Department of Revenue.

~~(93)]~~(95) Revenue Form 62A200, "Schedule A Fee Property Ownership", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

~~(94)]~~(96) Revenue Form 62A200, "Schedule B Leased Property", shall be filed by all lessees and sublessees with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

~~(95)]~~(97) Revenue Form 62A200, "Schedule C Property or Stock Transfers", shall be filed by both purchasers and sellers of unmined mineral property, with the Department of Revenue, reporting details of the transaction.

~~(96)]~~(98) Revenue Form 62A200, "Schedule D Lease Terminations, Transfers or Assignments", shall be filed by lessors or lessees of unmined minerals, with the Department of Revenue, reporting the parcel number, date lease was terminated and the seams assigned[reason for termination].

~~(97)]~~(99) Revenue Form 62A200, "Schedule E Farm Exception to Unmined Minerals Tax", shall be filed by surface owners,

who own the mineral rights in their entirety and are engaged primarily in farming, to be excepted from the unmined minerals tax.

(98)[(100)] Revenue Form 62A200, "Schedule F Geological Information by County", shall be filed by owners or lessees of unmined minerals, with the Department of Revenue, reporting exploration and analytical information.

(99)[(101)] Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

(100)[(102)] Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll", shall be filed by the property valuation administrator by the first Monday in April, showing a recapitulation of property assessments by type of property and by taxing district. This form shall also be known as "first recap".

(101)[(103)] Revenue Form 62A305, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes (Since Recapitulation)", shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304. This form shall also be known as "final recap" or "second recap".

(102)[(104)] Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owner's appeal conference. The property owner or his representative shall be asked to sign the record and shall be given a copy of the record.

(103)[(105)] Revenue Form 62A323, "Record of Additions and Deletions", shall be used by the PVA to report all real property additions and deletions for a particular assessment year.

(104)[(106)] Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the fair cash value of the company's intangible property, both taxable and exempt, and the aggregate amount.

(105)[(107)] Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", shall be filed by property owners seeking an exemption from property taxes under Ky. Const. Sec. 170. This application shall be filed with the property valuation administrator of the county in which the residential unit is located.

(106)[(108)] Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", shall be mailed to the property owner by the property valuation administrator notifying him of the assessment amount and of his appeal rights.

(107)[(109)] Revenue Form 62A353, "Notice of Listing of Omitted Real Property", shall be mailed by the property valuation administrator to the property owner. This document shall notify the property owner that his omitted property has been listed and assessed and of his appeal rights.

(108)[(110)] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform him of its [their] ruling.

(109) Revenue Form 62A358, "Receipt for Transferring Delinquent Property Tax Bills From the Sheriff to the County Clerk", shall be signed by both the sheriff and county clerk to affirm the number and total amount of delinquent tax bills transferred from the sheriff to the county clerk.

(110)[(114)] Revenue Form 62A359, "Sheriff's Report of Real Property Tax Bills Transferred to the County Clerk[Tax Claims Purchased for Taxing Districts]", shall be used by the sheriffs to report delinquent real estate tax bills that were transferred from the sheriff to the county clerk's office[purchased by the sheriff on behalf of the taxing districts].

(111)[(112)] Revenue Form 62A359-A, "Certification", shall be used by the sheriff to affirm that the list of delinquent real estate tax bills is accurate.

(113)[(114)] Revenue Form 62A360, "Order Correcting Erroneous Assessment", shall be issued to the collection agency (county sheriff or clerk) and taxpayer correcting an erroneous mineral property tax assessment.

(112)[(114)] Revenue Form 62A362, "Sheriff's Report of Delinquent Personal Property Tax Bills Transferred to the County Clerk[Taxpayers]", shall be used by the sheriff to report delinquent personal[tangible] property tax bills transferred from the sheriff to the county clerk's office.

(113)[(115)] Revenue Form 62A362-A, "Certification", shall be used by the sheriff to affirm that the list of delinquent tangible property tax bills is accurate.

(114)[(116)] Revenue Form 62A363, "County Clerk's Claim for Preparing Tax Bills", shall be submitted by the county clerk in order to receive payment for each property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(114)[(117)] Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", shall be submitted by the county clerk in order to receive payment of one (1) dollar for each omitted property tax bill prepared, with one-half (1/2) paid out of the county treasury and one-half (1/2) paid out of the State Treasury.

(115)[(118)] Revenue Form 62A364, "County Clerk's Monthly Report of Omitted Assessments", shall be used by the county clerk to report omitted assessments made by the property valuation administrator.

(116)[(119)] Revenue Form 62A365, "Nonresidency Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(117)[(120)] Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

(118)[(121)] Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property.

(119)[(122)] Revenue Form 62A366R, "Exoneration Form for Property Tax Refund", shall be filed by a taxpayer for refunds of property tax.

(120)[(123)] Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills", shall be used by a property valuation administrator to prepare additional or supplemental tax bills.

(121)[(124)] Revenue Form 62A367-A, "Instructions for Preparation of Additional/Supplemental Tax Bills and Official Receipt", shall be provided to assist the PVA with the preparation of additional or supplemental tax bills.

(122)[(125)] Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only.

(123)[(126)] Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for tax years after 1997.

(124)[(127)] Revenue Form 62A369, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for 1996 and earlier tax years.

(125)[(128)] Revenue Form 62A369-A, "County Clerk's Monthly Report of Delinquent Tax Collections", shall be used by county clerks to report monthly to the Department of Revenue state commission from delinquent property tax collections.

(126) Revenue Form 62A370, "Kentucky Department of Revenue Certificate of Registration", shall be issued by the Department of Revenue to individuals, corporations or partnerships proving eligibility to purchase certificates of delinquency. This certificate shall be presented to the county clerk at the time certificates of delinquency are offered for sale.

(127) Revenue Form 62A370A, "Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency", shall be submitted to the Department of Revenue by individuals, corporations or partnerships seeking to purchase certificates of delinquency offered for sale by the county clerk.

(128)[(129)] Revenue Form 62A372, "Sheriff's List of Orders Correcting Erroneous Assessments", shall be used by the sheriff to

report all exonerations made to the tax bills by the property valuation administrator.

~~(129)~~~~[(130)]~~ Revenue Form 62A372-A, "Certification", shall be used by the sheriff to affirm that the list of exonerations is accurate.

~~(130)~~~~[(134)]~~ Revenue Form 62A378, "Report of Location of Mobile Homes", shall be filed by every person providing rental space for mobile homes and house trailers. This form shall be filed with the property valuation administrator of the county in which the park is located.

~~(131)~~~~[(132)]~~ Revenue Form 62A379, "Listing of Omitted Real Property", shall be used by a taxpayer to voluntarily list any property previously omitted from the tax roll or shall be used by a property valuation administrator to list any involuntarily omitted property.

~~(132)~~~~[(133)]~~ Revenue Form 62A384C, "Clay Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing clay property, reporting the owner's name and address, percent ownership, product tons, and royalty rate.

~~(133)~~~~[(134)]~~ Revenue Form 62A384C-(I), "Instructions to Complete Clay Property Tax Return for 2010~~[2009]~~ Tax Year", shall be used by owners and lessees of land containing mineable clay minerals to file Revenue Form 62A384C.

~~(134)~~~~[(135)]~~ Revenue Form 62A384-G, "Natural Gas Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells, and the total dollar value of production.

~~(135)~~~~[(136)]~~ Revenue Form 62A384-G/O(I) "Instructions for Gas and Oil Property Tax Returns", **which is also referenced as "Gas/Oil"**, shall be provided to filers of gas and oil property tax returns instructing filers of the acceptable method of completing the gas and oil property tax return.

~~(136)~~~~[(137)]~~ Revenue Form 62A384L, "Limestone, ~~and~~ Sand and Gravel Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing limestone, sand or gravel properties reporting mineral location, type of mining and production in the last three (3) years.

~~(137)~~~~[(138)]~~ Revenue Form 62A384-O, "Oil Property Tax Return Lease Report", shall be filed with the Department of Revenue by all persons, corporations, businesses and partnerships owning, leasing or having knowledge of developed oil properties to report developed oil property in Kentucky.

~~(138)~~~~[(139)]~~ Revenue Form 62A385, "Sheriff's Official Receipt for Property Tax Bills", shall be used by sheriffs to acknowledge receipt of the county's property tax bills and to document the total tax amount to be collected for each taxing district.

~~(139)~~~~[(140)]~~ Revenue Form 62A385-A, "Sheriff's Receipt For Unpaid and Partially Paid Tax Bills", shall be used by incoming sheriffs to give receipt to the outgoing sheriff for the unpaid and partially paid tax bills outstanding when he assumes office.

~~(140)~~~~[(144)]~~ Revenue Form 62A393, "Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the annual property tax settlement with the sheriff.

~~(141)~~~~[(142)]~~ Revenue Form 62A393-A, "Incoming Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the incoming sheriff.

~~(142)~~~~[(143)]~~ Revenue Form 62A393-B, "Outgoing Sheriff's Property Tax Account Statement", shall be used by the Department of Revenue to conduct the property tax settlement with the outgoing sheriff.

~~(143)~~~~[(144)]~~ Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", shall be used by sheriffs to report to the Department of Revenue property tax collections for the month.

~~(144)~~~~[(145)]~~ Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections", shall be submitted by the county clerk to the Department of Revenue and local taxing jurisdictions to report ad valorem property tax collections for the month.

~~(145)~~~~[(146)]~~ Revenue Form 62A398, "Property Valuation Administrator's Bond", shall be completed by property valuation administrators evidencing surety with the Commonwealth and a local school board and affirming a commitment to fulfill the duties of the office.

~~(146)~~~~[(147)]~~ Revenue Form 62A399, "Notice to Appear in Cir-

cuit Court", shall be served to a person who is indebted to another person who has a delinquent tax liability.

~~(148)~~ Revenue Form 62A400, "Notice of Distrain", shall be sent by the sheriff to notify persons in possession of personal property belonging to a delinquent taxpayer that this property is subject to distraint in order to settle the tax liability.

~~(149)~~ Revenue Form 62A401, "Final Notice Before Distrain", shall be sent by the sheriff to the owner of real and personal property omitted from the tax roll.

~~(150)~~ Revenue Form 62A405, "Notice of Sale of Tax Bill", shall be sent by the county attorney to the owner of real property to notify the owner that a certificate of delinquency has been issued against the property.

~~(151)~~ Revenue Form 62A500(P), "2010~~[2009]~~ Personal Property Tax Forms and Instructions", shall be the packet of files and instructions relating to Revenue Form 62A500 for use by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

~~(147)~~~~[(152)]~~ Revenue Form 62A500, "2010~~[2009]~~ Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property reporting taxpayer information, original cost of tangible property and reported value of tangible property with either the property valuation administrator of the county of taxable situs or with the Department of Revenue.

~~(148)~~~~[(153)]~~ Revenue Form 62A500-A, "2010~~[2009]~~ Tangible Personal Property Tax Return (Aircraft Assessments Only)", shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the federal registration number, make and model, and taxpayer's value for each aircraft.

~~(149)~~~~[(154)]~~ Revenue Form 62A500-C, "Consignee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned inventory, that has not been reported on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting consignor information and consigned inventory information.

~~(150)~~~~[(155)]~~ Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return", shall be filed by lessees of tangible personal property who did not list the property on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting lessor information and equipment information.

~~(151)~~ Revenue Form 62A500-M1, "Boat Dealer's Used Inventory Listing for Line 31 Tangible Personal Property Tax Return" shall be filed by boat dealers with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of used boats held for sale by a licensed boat dealer.

~~(152)~~~~[(156)]~~ Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return", shall be filed by automobile dealers, dealers with new boat and marine equipment held under a floor plan or dealers with new farm machinery held under a floor plan with the property valuation administrator of each county of taxable situs or with the Department of Revenue, containing a detailed listing of property reported on line 34 of the Tangible Personal Property Tax Return.

~~(153)~~~~[(157)]~~ Revenue Form 62A500-W, "2010~~[2009]~~ Tangible Personal Property Tax Return (Documented Watercraft)", shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the coast guard number, make and model and taxpayer's value for each watercraft.

~~(154)~~~~[(158)]~~ Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filed with the Department of Revenue by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

~~(155)~~~~[(159)]~~ Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Department of Revenue by foreign savings and loans authorized to do business in this

state, reporting the balances in their capital accounts.

(156)[(160)] Revenue Form 62A601-S2, "Schedule B, Computation of Exempt Securities", shall be filed with the Department of Revenue, by taxpayers filing Revenue Form 62A600 or 62A601, reporting the market value of U. S. government securities.

(157)[(164)] Revenue Form 62A850, "Bank Deposits Tax Return", shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

(158)[(162)] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", shall be filed by the local taxing district with the Department of Revenue to notify the Department of Revenue of the rate set on bank deposits.

(159)[(163)] Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Department of Revenue, by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

(160)[(164)] Revenue Form 62A863-A, "Schedule A, Summary of Net Deposits", shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A863, to summarize deposits.

(161)[(165)] Revenue Form 62A880, "Personal Property Assessment", shall be sent by the Department of Revenue to the owner of omitted personal property notifying him of the value assessed by the department as well as all applicable penalties and interest.

(162)[(166)] Revenue Form 62B003, "Unmined Coal Notice of Tax Assessment", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

(163)[(167)] Revenue Form 62B011, "[2008] Limestone, Sand, or Gravel Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in limestone, sand or gravel property.

(164)[(168)] Revenue Form 62B012, "[2008] Oil Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in oil property.

(165)[(169)] Revenue Form 62B013, "[2008] Clay Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in clay property.

(166)[(170)] Revenue Form 62B015, "[2008] Gas Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

(167)[(174)] Revenue Form 62F003, "Appeals Process for Real Property Assessments", shall be an informational brochure on the procedure to follow to appeal an assessment on real property.

(168)[(172)] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

(169)[(173)] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer who wishes to appeal his assessment on real property.

(170)[(174)] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", shall inform taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 2. Severance Taxes - Required Forms.(1) Revenue Form 10A100, "Kentucky Tax Registration Application", shall be filed by taxpayers with a coal severance and processing tax account listing taxpayer information including mine name and mining permit number.

(2) Revenue Form 55A004, "Coal Severance Tax Seller/Purchaser[Seller's] Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

(3) Revenue Form 55A100, "Coal Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(4) Revenue Form 55A100, "Part IV - Schedule of Purchased Coal [Sales (Continuation)]", shall be used by the taxpayer to re-

port coal purchased for processing and resale[additional coal sales if there is not room on the return]. "Part V - Schedule for Thin Seam Coal Tax Credit", shall be used by the taxpayer to apply for tax credit for underground mining of thin coal seams.

(5) Revenue Form 55A101, "Coal Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his return.

(6) Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

(7) Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

(8) Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

(9) Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

(10) Revenue Form 56A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

(11) Revenue Form 56A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

(12) Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by a taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

(13) Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties where the natural gas or natural gas liquids were located prior to extraction.

(14) Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(15) Revenue Form 56A110, "Minerals Tax Return Attachment, Schedule C, Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

(16) Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

(17) Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(18) Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporters who wish to acquire an account number with the Kentucky Department of Revenue.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Property tax - referenced material:

1. Revenue Form 61A200(P), "Property Tax Forms and Instructions for Public Service Companies 2010[2009], June 2009[November 2008];

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2. Revenue Form 61A200, "Public Service Company Property Tax Return for Year Ending December 31, 2009[2008]", June 2009[November 2008];
3. Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", June 2009[November 2008];
4. Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", June 2009[November 2008];
5. Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", June 2009[November 2008];
6. Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", June 2009[November 2008];
7. Revenue Form 61A200(E), "Filing Extension Application", June 2009[November 2008];
8. Revenue Form 61A200(G), "Report of Capital Stocks", June 2009[November 2008];
9. Revenue Form 61A200(H), "Report of Funded Debt", June 2009[November 2008];
10. Revenue Form 61A200(I), "Business Summary by Taxing Jurisdiction", June 2009[November 2008];
11. Revenue Form 61A200(J), "Property Summary by Taxing Jurisdiction, Operating and Nonoperating Property", November 2009[December 2008];
12. Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction", June 2009[November 2008];
13. Revenue Form 61A200(K2), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction", June 2009[November 2008];
14. Revenue Form 61A200(L), "Report of Allocation Factors, Operating and Noncarrier Property for all Interstate Companies", June 2009[November 2008];
15. Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", June 2009[November 2008];
16. Revenue Form 61A200(N1), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", June 2009[November 2008];
17. Revenue Form 61A200(N2), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", June 2009[November 2008];
18. Revenue Form 61A200(N3), "Summary Report of System and Kentucky Operating Lease Payments", June 2009[November 2008];
19. Revenue Form 61A200(O), "Railroad Private Car Mileage Report", June 2009[November 2008];
20. Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", June 2009[November 2008];
21. Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", June 2009[November 2008];
22. Revenue Form 61A200(U), "Industrial Revenue Bond Property", June 2009[November 2008];
23. Revenue Form 61A202, "2010[2009] Public Service Company Property Tax Return for Railroad Car Line", June 2009[October 2008];
24. Revenue Form 61A206(P), "Public Service Company Property Tax Forms and Instructions for Commercial Air Passenger and Air Freight Carriers 2010[2009]", June 2009[October 2008];
25. Revenue Form 61A206, "Public Service Company Property Tax Return For Commercial Air Passenger and Air Freight Carriers", June 2009[October 2008];
26. Revenue Form 61A206(A), "Filing Extension Application for Public Service Company Property Tax Return", June 2009[October 2008];
27. Revenue Form 61A206(B), "Report of Kentucky Registered and Licensed Motor Vehicles", June 2009[October 2008];
28. Revenue Form 61A206(C), "Report of Financial Operations for Commercial Air Passenger and Air Freight Carriers", June 2009[October 2008];
29. Revenue Form 61A206(D-1), "Report of System Aircraft Fleet", June 2009[October 2008];
30. Revenue Form 61A206(D-2), "Report of System Aircraft Fleet", June 2009[October 2008];
31. Revenue Form 61A206(D-3), "Report of System Aircraft Fleet", June 2009[October 2008];
32. Revenue Form 61A206(E), "Report of Kentucky Flight Statistics By Airport", June 2009[October 2008];
33. Revenue Form 61A206(F), "Report of System and Kentucky Allocation Factors", June 2009[October 2008];
34. Revenue Form 61A206(G), "Report of Funded Debt", June 2009[October 2008];
35. Revenue Form 61A206(H), "Report of Operating Leased Real Property Located in Kentucky By Taxing District", June 2009[October 2008];
36. Revenue Form 61A206(I), "Report of Operating Leased Personal Property Located in Kentucky By Taxing District", June 2009[October 2008];
37. Revenue Form 61A206(J), "Summary Report of System and Kentucky Operating Lease Payments", June 2009[October 2008];
38. Revenue Form 61A206(K), "Report of Owned Real Property Located in Kentucky By Taxing District", June 2009[October 2008];
39. Revenue Form 61A206(L), "Report of Owned Personal Property Located in Kentucky By Taxing District", June 2009[October 2008];
40. Revenue Form 61A206(M), "Summary Report of Total System and Kentucky Operations", June 2009[October 2008];
41. Revenue Form 61A206(N), "Industrial Revenue Bond Property", June 2009[October 2008];
42. Revenue Form 61A206(O), "Public Service Company Sales", June 2009[October 2008];
43. Revenue Form 61A207(P), "Commercial Watercraft Personal Property Tax Return 2010[2009]", June 2009[November 2008];
44. Revenue Form 61A207, "2010[2009] Commercial Watercraft Personal Property Tax Return", November 2009[2007];
45. Revenue Form 61A207(A), "Report of Owned Vessels in Your Possession", November 2009[2008];
46. Revenue Form 61A207(B), "Report of Owned Vessels - in Possession of Others", November 2009[2008];
47. Revenue Form 61A207(C), "Report of Nonowned Vessels in Your Possession", November 2009[2008];
48. Revenue Form 61A207(D), "Valuation Worksheet", November 2009[2008];
49. Revenue Form 61A207(E), "Report of Kentucky Route Miles", November 2009[2008];
50. Revenue Form 61A207(F), "Report of System Route Miles", November 2009[2008];
51. Revenue Form 61A209, "Public Service Company Sales", June 2009[November 2008];
52. Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs", June 2009[October 2008];
53. Revenue Form 61A211(I), "Instructions Public Service Company Schedule of Owned and/or Leased Motor Vehicle with Kentucky Situs[for Enclosed Form 61A214]", June 2009[November 2008];
54. Revenue Form 61A230, "Notice of Assessment", February 2010[August 2008];
55. Revenue Form 61A240, "Notice of Assessment", August 2008;
56. Revenue Form 61A250, "Notice of Assessment", August 2008;
57. Revenue Form 61A255, "Public Service Company Property Tax Statement", July 2008;
58. Revenue Form 61A255(I), "Instructions for 61A255, Public Service Company Property Tax Statement", July 2008;
59. Revenue Form 61A500(P), "2010[2009] Personal Property Tax Forms and Instructions for Communications Service Providers and Multi-channel Video Programming Service Providers", November 2009[2008];
60. Revenue Form 61A500, "2010[2009] Tangible Personal Property Tax Return for Communication Service Providers and Multichannel Video Program Service Providers", November 2009[2008];
61. Revenue Form 61A500(H), "Report of Total Personal Tangible Property in Kentucky", November 2009[2008];

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62. Revenue Form 61A500(I), "Summary of Gross Personal Tangible Property Listing by Taxing District", October 2009[November-2008];
63. Revenue Form 61A500(J), "Summary of Reported Personal Tangible Property Listing by Taxing District", October 2009[November-2008];
64. Revenue Form 61A500(K), "Personal Tangible Property Listing by Taxing District", November 2009[2008];
65. Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", January 2006;
66. Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", June 2009[November-2008];
67. Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", June 2009[November-2008];
68. Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Storage Cost Schedule", June 2009[November-2008];
69. Revenue Form 61A508-S3, "Schedule 3 Schedule of Bulk Sales", June 2009[November-2008];
70. Revenue Form 61A508-S4, "Schedule 4", June 2009[November-2008];
71. Revenue Form 61A508-S5, "Schedule 5", June 2009[November-2008];
72. Revenue Form 61A509, "Distilled Spirits or **Telecoms** [Telecoms] Property Tax Statement", July 2008;
73. Revenue Form 61F007, "Notification Protesting Your Commercial Watercraft Assessment ", February 2010[August 2008];
74. Revenue Form 61F008, "Notification Protesting Your Assessment ", February 2010[August 2008];
75. Revenue Form 61F009, "Notification Protesting Your Assessment", February 2010[August-2008];
76. Revenue Form 61F010, "Property Value Assessments for Public Service and Centrally Assess Companies-Assessment of Distilled Spirits in Bonded Warehouses", February 2010[Notification Protesting Your Assessment (Distilled Spirits)]", August 2007];
77. Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice", 2006[2009][2006];
78. Revenue Form 62A007S, "Motor Vehicle/Boat Property Tax Notice - Second Notice", 2006[2009][2006];
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122. Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;
123. Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections", February 2006;
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127. Revenue Form 62A370A, "Kentucky Department of Revenue Application for Certificate of Registration to Purchase Certificates of Delinquency", November 2009;

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131.[129-] Revenue Form 62A379, "Listing of Omitted Real Property", November 2009[December-2008];

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140.[138-] Revenue Form 62A393, "Sheriff's Property Tax Account Statement", February 2006;

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158.[159-] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", October 2008;

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161.[162-] Revenue Form 62A880, "Personal Property Assessment", October 2004;

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164.[165-] Revenue Form 62B012, "[2008] Oil Assessment Notice", July 2006;

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4. Revenue Form 55A100, "Part IV - Schedule of Purchased Coal [Sales-(Continuation)]" and "Part V - Schedule for Thin Seam Coal Tax Credit", May, 2008[August-2005];

5. Revenue Form 55A101, "Coal Tax Return Instructions", **November 2009 [August-2005];**

6. Revenue Form 55A131, "Credit Memorandum", December 2006;

7. Revenue Form 55A209, "Severance Tax Refund Application", August 2009[December-2006];

8. Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", October 1984;

9. Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return", July 2004;

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12. Revenue Form 56A107, "Schedule A, Allocation of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", January 2005;

13. Revenue Form 56A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", March 2005;

14. Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer from Kentucky Producers", January 2005;

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16. Revenue Form 56A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", July 2004;

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THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: March 8, 2010

FILED WITH LRC: March 11, 2010 at 4 p.m.

CONTACT PERSON: DeVon Hankins, Policy Advisor, Office of General Counsel, Finance and Administration Cabinet, 392 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

**GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, May 11, 2010)**

201 KAR 20:490. Licensed practical nurse intravenous therapy scope of practice.

RELATES TO: KRS 314.011(10)(a), (c)

STATUTORY AUTHORITY: KRS 314.011(10)(c), 314.131(1), 314.011(10)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.011(10)(c) authorizes the board to promulgate an administrative regulation to establish the scope of practice for administering medicine or treatment by a licensed practical nurse, and KRS 314.011(10)(a) requires that licensed practical nurses practice under the direction of a registered nurse, physician, or dentist. This administrative regulation establishes the scope of that practice as it relates to intravenous therapy.

Section 1. Definitions. (1) "Administration" means to initiate and infuse intravenous therapy.

(2) "Antineoplastic agent" means a medication that prevents the development, growth, or proliferation of malignant cells.

(3) "Bolus" means a concentrated medication or solution given rapidly over a short period of time.

(4) "Central venous access device" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava, inferior vena cava, or heart, including a peripherally-inserted central catheter and an implanted port.

(5) "Direction" means a communication of a plan of care that is based upon assessment of a patient by an advanced registered nurse practitioner, a registered nurse, physician, or dentist that establishes the parameters for the provision of care or for the performance of a procedure.

(6) "Discontinuance" means to stop the infusion of the medication or fluid and does not include removal of the intravenous access device.

(7) "Fibrinolytic agent" means a pharmaceutical agent capable of dissolving blood clots.

(8) "Intravenous access device" means either a peripheral access device or a central venous access device.

(9) "Mix" or "mixing" means to combine two (2) or more medications or solutions, and includes reconstituting a powder into a liquid, and diluting a medication or solution.

(10)[(9)] "Moderate sedation" means the administration of intravenous medications to produce a state that intentionally results in a depressed level of consciousness in a patient.

(11)[(40)] "Peripheral access device" means a peripherally-inserted intravenous catheter or needle that is less than or equal to three (3) inches in length.

(12)[(44)] "Pharmacology" means information on the classification of intravenous drugs, indications for use, pharmacological properties, monitoring parameters, contraindications, dosing, clinical mathematics, anticipated side effects, potential complications, antidotal therapy, compatibilities, stabilities, specific considerations for select intravenous drugs, and administration of intravenous

medications to pediatric, adult, and geriatric populations.

(13)[(42)] "Procedural sedation" means the administration of intravenous medications to produce a state that allows a patient to tolerate unpleasant procedures and results in a depressed level of consciousness.

(14)[(43)] "Push" means administration of medication under pressure via a syringe.

(15)[(44)] "Supervision" means the provision of guidance by a registered nurse, advanced registered nurse practitioner, physician or dentist for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed in a safe manner.

(16)[(45)] "Supervisor" means the registered nurse, advanced registered nurse practitioner, physician or dentist who provides supervision of the licensed practical nurse's practice as defined in subsection (15)[(44)] of this section.

(17)[(46)] "Therapeutic phlebotomy" means a clinical procedure whereby blood volume is reduced to achieve a therapeutic outcome.

(18)[(47)] "Titration" means adjustment of a medication dosage or rate of solution infusion as prescribed within a therapeutic range that is based on the assessment of a patient.

(19)[(48)] "Vesicant" means an agent capable of causing injury ~~if~~when it escapes from the intended vascular pathway into surrounding tissue.

Section 2. Education and Training Standards. (1) Prior to performing intravenous (IV) therapy, the licensed practical nurse (LPN) shall have completed education and training related to the scope of IV therapy for an LPN. This education and training shall be obtained through:

(a) A precicensure program of nursing for individuals admitted to the program after the effective date of this administrative regulation; or

(b) An institution, practice setting, or continuing education provider that has in place a written instructional program and a competency validation mechanism that includes a process for evaluation and documentation of an LPN's demonstration of the knowledge, skills, and abilities related to the safe administration of IV therapy. The LPN shall receive and maintain written documentation of completion of the instructional program and competency validation.

(2) The education and training programs recognized in subsection (1) of this section shall be based on "Policies and Procedures for Infusion Nursing" ~~[as incorporated by reference in Section 7 of this administrative regulation]~~ and shall include the following components:

(a) Technology and clinical applications;

(b) Fluid and electrolyte balance;

(c) Pharmacology and vesicants;

(d) Infection control;

(e) Transfusion therapy;

(f) Parenteral nutrition; and

(g) Legal aspects based on KRS Chapter 314 and this administrative regulation.

Section 3. Supervision Requirements. (1) An LPN performing IV therapy procedures shall be under the direction and supervision of a registered nurse (RN), advanced registered nurse practitioner (ARNP), physician, or dentist.

(2) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may provide supervision of the LPN's provision of IV therapy without being physically present in the immediate vicinity of the LPN, but shall be readily available.

(3) In the following cases, for the LPN to provide IV therapy, the LPN's supervisor shall be physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

(a) If a patient's condition is or becomes critical, fluctuating, unstable, or unpredictable;

(b) If IV medications or fluids are administered by push or bolus administration, except for saline or heparin to maintain patency

of an IV access device;

(c) If a patient has developed signs and symptoms of an IV catheter-related infection, venous thrombosis, or central line catheter occlusion;

(d) If a patient is receiving blood, blood components, or plasma volume expanders; or

(e) If a patient is receiving peritoneal dialysis or hemodialysis.

Section 4. Standards of Practice. (1) An LPN shall perform only those IV therapy acts for which the LPN possesses the knowledge, skill, and ability to perform in a safe manner, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation.

(2) An LPN shall consult with an RN or physician, physician assistant, dentist, or advanced practice registered nurse [other appropriate individual] and seek guidance as needed if:

(a) The patient's care needs exceed the licensed practical nursing scope of practice;

(b) The patient's care needs surpass the LPN's knowledge, skill, or ability; or

(c) The patient's condition becomes unstable or imminent assistance is needed.

(3) An LPN shall obtain instruction and supervision as necessary if implementing new or unfamiliar nursing practices or procedures.

(4) An LPN shall follow the written, established policies and procedures of the facility that are consistent with KRS Chapter 314.

Section 5. Functions That May Be Performed. An LPN who has met the education and training requirements of Section 2 of this administrative regulation may perform the following IV therapy functions, except as limited by Section 6 of this administrative regulation and under supervision as required by Section 3 of this administrative regulation:

(1) Calculation and adjustment of the flow rate on all IV infusions;

(2) Observation and reporting of subjective and objective signs of adverse reactions to any IV administration and initiate appropriate interventions;

(3) For all IV access devices:

(a) Administration of IV fluids and medications via central venous and peripheral access devices as permitted by this Section and prohibited by Section 6 of this administrative regulation;

(b) Performance of site care and maintenance that includes:

1. Monitor access site and infusion equipment;

2. Change administration set, including add-on device and tubing;

3. Flushing; and

4. Change site dressing;

(c) Discontinuance of a medication or fluid infusion; and

(d) Conversion of a continuous infusion to an intermittent infusion; [.]

(4) Insertion or removal of a peripheral access device;

(5) Administration, monitoring, and discontinuance of blood, blood components, and plasma volume expanders;

(6) Administration of IV medications and fluids that are mixed and labeled by an RN, ARNP, physician, dentist, or pharmacist or are commercially prepared;

(7) Mixing and administration via push or bolus route of any of the following classifications of medications:

(a) Analgesics;

(b) Antiemetics;

(c) The antagonistic agents for analgesics;

(d) Diuretics;

(e) Corticosteroids; and

(f) Saline or heparin to maintain patency of an IV access device;

(8) Administration of glucose to patients fourteen (14) years of age or older via direct push or bolus route;

(9) Administration, monitoring, and discontinuance of IV medications and fluids given via a patient controlled administration system;

(10) Administration, monitoring, and discontinuance of parenteral nutrition and fat emulsion solutions;

(11) Performance of dialysis treatment, including:

(a) Administering Heparin 1:1000 units or less concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner. The licensed practical nurse shall not administer Heparin in concentrations greater than 1:1000; and

(b) Administering normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician;

(12) Collection of blood specimens from a peripheral[an] IV access device;

(13) Removal of a noncoring needle from an implanted venous port; [and]

(14) Titration of intravenous analgesic medications for hospice patients;

(15) Administration of peripheral intravenous medications via a volumetric control device;

(16) Administration of intravenous medications or solutions via a ready-to-mix intravenous solution infusion system; and

(17) Aspiration of a central venous catheter to confirm patency via positive blood return.

Section 6. Functions that Shall Not be Performed. An LPN shall not perform the following IV therapy functions:

(1) Administration of tissue plasminogen activators, immunoglobulins, antineoplastic agents, or investigational drugs;

(2) Accessing of a central venous access device used for hemodynamic monitoring;

(3) Administration of medications or fluids via arterial lines or implanted arterial ports;

(4) Administration of medications via push or bolus route except as permitted by Section 5(7) or (8) of this administrative regulation;

(5) Administration of a fibrinolytic agent to declot any IV access device;

(6) Administration of medications requiring titration, except as permitted by Section 5(14) of this administrative regulation;

(7) Insertion or removal of any IV access device, except as permitted by Section 5(4) or (13) of this administrative regulation;

(8) Accessing or programming an implanted IV infusion pump; [.]

(9) Administration of IV medications for the purpose of procedural sedation, moderate sedation, or anesthesia;

(10) Administration of fluids or medications via an epidural, intrathecal, intraosseous, or umbilical route, or via a ventricular reservoir;

(11) Administration of medications or fluids via an arteriovenous fistula or graft, except for dialysis;

(12) Performance of the repair of a central venous access device;

(13) Mixing of any medications other than those listed in Section 5(7) of this administrative regulation;

(14) Insertion of noncoring needles into an implanted port; or

(15) Performance of therapeutic phlebotomy;

(16) Administration of medications or fluids via a percutaneous-ly or surgically inserted nontunneled, nonimplanted central venous catheter;

(17) Aspiration of an arterial line;

(18) Withdrawal of blood specimens via a central venous catheter; or

(19) Initiation and removal of a peripherally inserted central, midclavicular, or midline catheter.

Section 7. Incorporation by Reference. (1) "Policies and Procedures for Infusion Nursing," Third Edition (2006), Infusion Nurses Society, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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JIMMY ISENBERG, President

APPROVED BY AGENCY: February 19, 2010

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 11, 2010)**

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.390,
150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170,
150.175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons, bag limits, methods of taking, and to promulgate administrative regulations [and other matters] necessary to carry out the purpose of KRS Chapter 150. KRS 150.170 exempts landowners, servicemen, and other groups from hunting license and permit requirements. KRS 150.175 authorizes[defines] the kinds of licenses and permits to be issued by the department. This administrative regulation establishes deer hunting seasons and zones, [defines] legal methods of taking, and [establishes] checking and recording requirements for deer hunting.

Section 1. Definitions. (1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Antlered deer" means a deer with a visible antler protruding above the hairline.

(3) "Antlerless deer" means a deer with no visible antler protruding above the hairline, and includes:

(a) Female deer; and

(b) Male fawns or button bucks[including female deer and male fawns (button bucks)].

(4) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(5) "Arrow" means the projectile fired from a bow or crossbow.

(6) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(7) "Bonus antlerless permit" means a permit that, in conjunction with appropriate licenses, [and] permits, seasons, and methods, allows the holder to take two (2) additional antlerless deer.

(8) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(9) "Deer" means a member of the species *Odocoileus virginianus*.

(10) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(11) "Fully-automatic firearm" means a firearm that fires more than one (1) time with a single pull of the trigger.

(12) "License year" means the period from March 1 through the following last day of February.

(13) "Modern gun" means a rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15) "Shotshell" means ammunition containing more than one (1) projectile.

(16) "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods, allows the holder to take one (1) either-sex deer and one (1) antlerless deer.

(17) "Statewide deer requirements" means the season dates, zone descriptions, bag limits, and other requirements and re-

strictions for deer hunting established in this administrative regulation.

(18) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(19) "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person shall carry proof of purchase of a valid Kentucky hunting license and valid deer permit while hunting.

(2) In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license shall not use more than two (2) junior deer hunting permits.

(3) A bonus antlerless permit shall not be valid unless accompanied by a valid Kentucky hunting license and statewide deer permit.

Section 3. Hunter Restrictions. (1) A deer hunter:

(a) Shall not take deer except during daylight hours;

(b) Shall not use dogs, except leashed tracking dogs to recover wounded deer;

(c) Shall not take a deer that is swimming[swimming deer]; and

(d) Shall not take a deer from a vehicle, boat, or [while] on horseback, except that a hunter with[in possession of] a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(e) Shall not possess or use a decoy or call powered by electricity from any source.

(2) A deer hunter shall not take a deer with any device except a firearm, crossbow, or archery equipment as authorized by Section 5 of this administrative regulation.

(3) A person shall not use any of the following items to take a [Except as authorized by KRS 237.110, a person shall not carry any of the following items while hunting] deer:

(a) Rimfire ammunition;

(b) A fully-automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Full metal jacketed ammunition;

(e) Tracer bullet ammunition;

(f) A shotshell containing larger than number two (2) size shot;

(g) A broadhead smaller than seven-eighths (7/8) inch wide;

(h) A barbed broadhead;

(i) A crossbow without a working safety device;

(j) A chemically-treated arrow; [or]

(k) An arrow with a chemical attachment;

(l) Multiple projectile ammunition; or

(m) Any weapon that is not consistent with the appropriate season established in Section 5 of this administrative regulation. [(4) Except as authorized by KRS 237.110, a person shall not carry a firearm while hunting deer, except when a firearm deer season is open.

~~(5) A person, including someone authorized to carry a concealed weapon pursuant to KRS 237.110, shall not:~~

~~(a) Use multiple projectile ammunition or any of the items listed in subsection (3) of this section to take deer.~~

~~(b) Use any weapon to take deer that is not consistent with the appropriate season established in Section 5 of this administrative regulation.]~~

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season and any[- or a][the] youth firearm season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

(2) During an elk firearm season[seasons] as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl.

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(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

- (a) May display a small section of another color; and
 - (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.
- (4) A ~~camouflage-pattern~~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.

Section 5. Statewide Season Dates. (1) A ~~legal~~ deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern firearm statewide beginning the second Saturday in November:

- (a) For sixteen (16) consecutive days in Zones 1 and 2; and
 - (b) For ten (10) consecutive days in Zones 3 and 4.
- (3) A deer hunter may use a muzzle-loading gun to hunt deer gun statewide:

- (a) For two (2) consecutive days beginning the third Saturday in October;
- (b) For nine (9) consecutive days beginning the second Saturday in December; and
- (c) During any season when a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide:

(a) From October 1 through the end of the third full weekend in October;

(b) From the second Saturday in November through December 31; and

(c) During any season when a firearm may be used to take deer.

(5) Youth firearm season. For two (2) consecutive days beginning on the second Saturday in October, a youth deer hunter shall:

(a) Use any legal method to take antlered or antlerless deer; and

(b) Be required to follow all other statewide deer hunting requirements.~~[using a firearm may take antlered or antlerless deer.]~~

(6) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth shall:

(a) [Shall] Not be required to have a hunting license or deer permit;

(b) [Shall] Use any legal method to take antlered or antlerless deer; and

(c) [Shall] Be required to follow all other statewide deer hunting requirements.~~[Free youth weekend. For two (2) consecutive days beginning on the Saturday after Christmas, a youth without a hunting license or deer permit may use archery equipment, firearms, or crossbows to take a deer. Statewide bag limits and harvest reporting requirements shall apply.]~~

Section 6. Zones. (1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Caldwell~~[Bullitt]~~, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, ~~[Hardin]~~, Harrison, ~~[Hart]~~, Henry, Hickman, Jefferson, Kenton, Livingston, Lyon, Marshall, McCracken, ~~[Nelson]~~, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Trigg, Trimble, Washington, and Woodford Counties.

(2) Zone 2 shall consist of ~~[Adair]~~ Allen, ~~[Barren]~~ Bourbon, Boyd, Bullitt~~[Butler, Caldwell]~~, Carter, ~~[Cumberland, Daviess, Edmondson]~~, Fayette, Fleming, Green, Greenup, ~~Hardin~~, Hart~~[Hancock]~~, Henderson, Hopkins, Jessamine, Larue, Lawrence, Lewis, Logan, ~~[Marion]~~ Mason, McLean, Mercer, ~~[Metcalfe, Monroe]~~, Muhlenberg, Nelson, Nicholas, ~~[Ohio]~~ Rowan, ~~[Simpson]~~, Taylor, Union, ~~[Warren]~~ and Webster Counties.

(3) Zone 3 shall consist of Adair, Barren, Bath, Boyle, Breckinridge, Butler, Casey, Clark, Cumberland, Daviess, Edmondson~~[Clinton]~~, Elliott, Estill, ~~[Garrard]~~ Grayson, Hancock, Johnson, ~~[Knox, Laurel]~~ Lee, Lincoln, Madison, Marion, Meade, Menifee, Metcalf, Monroe, Montgomery, Morgan, Ohio, Powell, Simpson, Taylor, Warren~~[Russell, Whitley]~~, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Garrard, Harlan, Jackson, Knott, Knox, Laurel, Leslie, Letcher,

Magoffin, Martin, McCreary, Owsley, Perry, Pike, Pulaski, Rockcastle, Russell, ~~[and]~~ Wayne, and Whitley Counties.

Section 7. Season and Zone Limits. (1) A person shall not take more than four (4) deer statewide in a license year except:

(a) As authorized in 301 KAR 2:111, 2:176, 2:178, and 3:100; and

(b) A person may take an unlimited number of antlerless deer in Zone 1 provided the person has purchased the appropriate bonus permits.

(2) A person shall not take more than one (1) antlered deer per license year, except as established in 301 KAR 2:111, 2:176, and 3:100.

(3) [Except as provided in 301 KAR 2:111, 2:176, 2:178, and 3:100, in a license year, a person shall not take more than:

(a) One (1) antlered deer; and

(b) The number of antlerless deer permitted in the zones specified in subsections (2) through (4) and (5) of this section provided that the person has purchased the appropriate bonus antlerless permits.

(2) In zone 1, a person may take an unlimited number of antlerless deer.

(3) In zone 2 a person may take a total number of four (4) deer.

(4) In Zone 3, a person may take[:

(a) A total of four (4) deer; and

(b) Only two (2) deer with a firearm.

(4) [(5)] In Zone 4, a person may take:

(a) [A total of four (4) deer;

(b) Only two (2) deer with [by using] a firearm; and

(b) [(c)] Antlered deer only [by using a firearm] during:

1. Modern firearm season; [and]

2. Early muzzleloader season; and

3. The first six (6) days of the December muzzleloader season.

Section 8. Supervision of Youth Firearm Deer Hunters. (1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's firearm.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting. ~~[(3) Except as authorized by KRS 237.110, an adult accompanying a youth during the youth firearm season shall not carry a firearm.]~~

Section 9. Harvest Recording. (1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The country where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log when the person is in the field during the current hunting season.[:

(1) Record, in writing, the species, date taken, county where taken, and sex of the deer before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:

(a) Hunter's log section on the reverse side of a license or permit;

(b) Hunter's log produced in a hunting guide;

(c) Hunter's log printed from the Internet;

(d) Hunter's log available from any KDSS agent; or

(e) An index card or reasonable facsimile thereof; and

(2) Retain the completed hunter's log in his or her possession whenever the hunter is in the field during the current season.]

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Section 10. Checking a Deer. (1) A person shall check a harvested deer by:

(a) Calling the toll free telecheck number, (800) 245-4263, before midnight on the day the deer is recovered ~~and~~ prior to processing or removing the hide or head from the carcass;

(b) Providing the information requested by the automated check-in system; and

(c) Writing the confirmation number given by the system on the hunter's log ~~authorized~~described in Section 9 of this administrative regulation.

(2) If a hunter transfers possession of a harvested deer~~[harvested deer leaves the possession of a hunter]~~, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(3) A person shall not provide false information while completing the hunter's log, checking a deer, or creating a carcass tag.

Section 11. Transporting and Processing Deer. (1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken;

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or ~~an~~other individual who commercially butchers deer shall:

(a) Not accept deer carcasses or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag ~~as established~~described in Section 10 of this administrative regulation.

(b) Keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain such records for a period of one (1) year.

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 11, 2010

FILED WITH LRC: March 12, 2010 at 2 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, May 11, 2010)

301 KAR 2:178. Deer hunting on Wildlife Management Areas, ~~and~~ state parks, ~~and~~ other public lands.

RELATES TO: KRS 150.010, 150.340, 150.370~~(1)~~, 150.390, 150.990

STATUTORY AUTHORITY: 148.029~~(5)~~, 150.025~~(1)~~, 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029~~(5)~~ authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to implement wildlife management plans on state parks. KRS 150.025~~(1)~~ authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits, and to make these requirements apply to a limited area. KRS 150.620 authorizes the department to promulgate administrative regulations for the maintenance and operation of the lands it has acquired for public recreation~~[and 150.620 authorize the department to establish hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150 on Wildlife Management Areas (WMAs)]~~. This administrative regulation establishes deer hunting seasons, application

procedures, and other matters pertaining to deer hunting on Wildlife Management Areas that differ from statewide requirements and on state parks ~~[as requested by the Department of Parks]~~. ~~[This administrative regulation is necessary to manage hunting pressure on WMAs and to allow controlled deer hunting at selected state parks to relieve serious overpopulations of white-tailed deer that are damaging the ecological integrity of those parks.]~~

Section 1. Definitions. (1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife. ~~["Bonus quota hunt deer permit" means a permit that authorizes a hunter participating in a Wildlife Management Area or state park quota hunt and who possesses a statewide deer permit to take additional deer during a quota hunt.]~~

(2) "Centerfire" means a type of firearm that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(3) "In-line muzzleloading gun" means a firearm capable of being loaded only from the discharging end of the barrel or cylinder, that is also equipped with an enclosed ignition system located directly behind the powder charge.

(4) "Mobility-impaired" means an individual who meets the requirements of Section 2(1) of 301 KAR 3:026.

(5) "Modern firearm season" means the ten (10) or sixteen (16) consecutive day period beginning the second Saturday in November when breech-loading firearms may be used to take deer pursuant to 301 KAR 2:172.

(6) "Optical enhancement" means any sighting device other than open or "iron" sights.

(7) "Quota hunt" means a Wildlife Management Area or state park hunt where a participant is selected by a random drawing.

(8) "Statewide ~~deer~~ requirements" mean the season dates, zone descriptions, and other requirements for deer hunting established in 301 KAR 2:172.

(9) "Wildlife management area" or "WMA" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and

(b) That has "Wildlife Management Area" or "WMA" as part of its official name. ~~["Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license, or cooperative agreement.]~~

(10) "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. General WMA Requirements. (1) Unless specified ~~[otherwise]~~ in this administrative regulation, statewide ~~deer~~ requirements shall apply to a WMA.

(2) A hunter shall not take more than one (1) deer per day on a WMA, except during a quota hunt.

(3) Unless specified in Section 6 of this administrative regulation, if a WMA is in two (2) or more deer hunting zones as established in 301 KAR 2:172, then the WMA shall be regulated by the most liberal zone requirements of the zones in which it lies.

~~(4) [Unless specified otherwise in Section 6 of this administrative regulation, a WMA in two (2) or more deer hunting zones as specified in 301 KAR 2:172 is governed by the most liberal zone requirements of the zones in which it lies.]~~

~~(3) [Deer hunting on WMAs listed in Section 6 of this administrative regulation, shall be permitted only as stated, except archery hunting is allowed under the statewide archery requirements established in 301 KAR 2:172, unless otherwise noted.]~~

~~(5) [An open firearm deer hunt, beginning on the Wednesday following the third Monday in January for ten (10) consecutive days, shall:~~

~~(a) Be limited to members of the United States Armed Forces and the National Guard and reserve component who:~~

~~1. Are residents of Kentucky or nonresidents stationed in Kentucky; and~~

~~2. Were deployed out-of-country during any portion of the most recent regular statewide deer season.~~

~~(b) Only be on a WMA designated as open for this special hunt; and~~

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(c) Follow statewide ~~[deer hunting]~~ requirements established in 301 KAR 2:172.

~~(6) [(4) An open firearm deer hunt:~~

~~(a) Shall be limited to United States Armed Forces and National Guard veterans who are residents of Kentucky, or nonresidents stationed in Kentucky, and who were deployed out-of-country during any portion of the most recent regular statewide deer season;~~

~~(b) Shall be the Wednesday following the third Monday in January for ten (10) consecutive days; and~~

~~(c) Participant shall follow statewide deer requirements and hunt only on WMAs designated as open for this special hunt.~~

~~(5) On a WMA, a person:~~

~~(a) Shall not use a nail, spike, screw-in device, wire, or tree climber for attaching a tree stand or climbing a tree;~~

~~(b) May use a portable stand or climbing device that does not injure a tree;~~

~~(c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it within one (1) week following the last day, of each hunting period;~~

~~(d) Shall plainly mark the portable stand with the hunter's name and address; [and]~~

~~(e) Shall not use an existing permanent tree stand; and~~

~~(f) Shall not place, distribute, or hunt over bait.~~

~~(7) [(6)] A person without a valid quota hunt confirmation number shall not enter a WMA during a quota hunt on that area except:~~

~~(a) To travel through a WMA on an established road or to use an area designated open by a sign; or~~

~~(b) One (1) assistant who shall not be required to have applied for the quota hunt, may accompany a mobility-impaired hunter who was drawn to hunt; [but] [To accompany a movement-impaired hunter who was drawn to hunt. Only one (1) assistant shall be allowed, and] [the assistant shall not be required to have applied for the quota hunt].~~

~~(8) [(7)] [Except if waterfowl hunting or hunting at night,] A person hunting any species except waterfowl hunting or hunting at night, or a person accompanying a hunter shall wear hunter or orange clothing as specified in 301 KAR 2:172 while on a WMA when firearms are permitted for deer hunting or while hunting within the sixteen (16) county elk zone when firearm elk season is in progress. [(9) A person shall not place, distribute, or hunt over bait] [(8) A person shall not place, distribute, or hunt over bait as prohibited in 301 KAR 3:040].:]~~

Section 3. General Quota Hunt Procedures. (1) A quota hunt applicant who is not selected and applies to hunt the following year shall be given one (1) preference point for each year the applicant was not selected.

(2) If selected for a quota hunt other than the Taylorsville Lake WMA antlerless-only hunt, a person shall lose all accumulated preference points.

(3) A random selection of ~~hunters~~[those] with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(4) If a person does not apply for a deer quota hunt in a given year, then all accumulated preference points shall be forfeited.

(5) Each applicant's preference points are independent of each other. If applying as a party, the entire party is selected if one (1) member of the party is selected.

(6) The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

(7) A hunter may take up to two (2) deer on a quota hunt, only one (1) of which may be an antlered deer, except as authorized in Section 6 of this administrative regulation.

~~(8) [Unless otherwise specified in Section 6 of this administrative regulation, a hunter may take up to two (2) deer on a quota hunt, only one (1) of which may be an antlered deer.~~

~~(8) Bonus quota hunt permits shall only be used for quota hunts. Deer taken with these permits do not count toward the statewide total deer limit.~~

(9) There shall be one (1) person drawn from the eligible quota hunt applicants ~~[to the quota hunts]~~ who were not selected in the original drawing. This person shall receive one (1) deer permit that

carries with it all the privileges of the Special Commission Permit described in 301 KAR 3:100.

Section 4. Quota Hunt Application Process. A person applying for a quota hunt shall:

(1) Call the toll free number listed in the current fall hunting and trapping guide from a touch-tone phone between September 1 and September 30;

(2) Enter each applicant's Social Security number;

(3) Indicate a first and second choice of hunts; and

(4) Pay a three (3) dollar application fee for each applicant, prior to the draw by:

(a) Check;

(b) Money order;

(c) Visa; or

(d) Master Card.

(5) Not apply more than one (1) time;

(6) Not apply as a group of more than five (5) persons; and

(7) Not be eligible to participate in a quota hunt unless selected pursuant to this administrative regulation, or accompanying a movement-impaired hunter.

Section 5. Quota Hunt Participant Requirements. Except as otherwise specified in this administrative regulation, a person selected to participate in a quota hunt shall:

~~(1) [Check in and show proof of his or her Social Security number;~~

~~(2)] Possess an annual Kentucky hunting license, except as provided in KRS 150.170(3) and 150.170(6);~~

~~(3) [(3) Show proof of purchasing a current statewide deer permit;~~

~~(4)] Possess a deer permit that authorizes the taking of deer with the equipment being used and in accordance with the zone restrictions where the hunt will occur;~~

~~(5) [(5)] Possess an unused bonus deer permit, if the person has already taken the two (2) deer authorized by possession of the statewide deer permit;~~

~~(6) [(6)] Not be required to possess a deer permit if the person possesses and presents a senior/disabled combination hunting and fishing license at time of check-in, is on military furlough for more than three (3) days, or is under twelve (12) years of age;~~

~~(7) [(7)] Hunt on assigned date and in assigned areas selected by a random drawing of applicants if necessary;~~

~~(8) [(8)] Comply with hunting equipment restrictions specified by the type of hunt;~~

~~(7) Check in at the designated check station:~~

~~(a) Either:~~

~~1. On the day before the hunt, between noon and 8 p.m. local time; or~~

~~2. On the day of the hunt, between 5:30 a.m. and 8 p.m. Eastern time; and~~

~~(b) With documentation of the participant's:~~

~~1. Social Security number or draw confirmation number; and~~

~~2. Purchase of a current statewide deer permit;~~

~~(8) [(9) Check in from noon to 8 p.m. local time on the day before the hunt or between 5:30 a.m. and 8 p.m. Eastern time on the day of the hunt;~~

~~(10)] Check [in and] out [daily] at the designated [WMA or state park] check station:~~

~~(a) If [When] finished hunting;~~

~~(b) If the hunter's bag limit is reached; or~~

~~(c) By 8 p.m. Eastern time on the final day of the hunt;~~

~~(9) Take a harvested deer to the designated check station by 8 p.m. Eastern time the day the deer was harvested.~~

~~(10) [(11) A harvested deer shall be taken to the designated check station on a WMA or state park by 8 p.m. on the day the deer was harvested.~~

~~(12)] Be declared ineligible to apply for the next year's drawing if the hunter fails to check out properly; and~~

~~(11) [(13)] [(12)] Comply with all waterfowl, pheasant, quail, and deer quota hunt requirements, including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for any quota hunt for these~~

species the following year.

Section 6. [WMA] Hunting Dates, Requirements and Restrictions. (1) Adair WMA. The crossbow season shall be open under statewide requirements.

(2) Ballard WMA.

(a) On the main tract, the quota hunt shall be for two (2) consecutive days beginning on the first Saturday in November. ~~[-]~~

(b) On the main tract, the archery, crossbow, and youth firearm seasons shall be open under statewide requirements through October 14, except that the two (2) mile driving loop marked by signs shall be closed to all hunting; [-] ~~within the two (2) mile driving loop as marked by signs. This area shall be closed to all hunting.~~

(c) The crossbow, modern firearm, youth firearm, and muzzle-loader seasons shall be open under statewide requirements only on the 400 acre tract south of Sallie Crice Road. ~~[- and] [-]~~

(d) A hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(3) Barren River WMA. The area shall be open under statewide requirements except that on the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not hunt deer with a modern firearm.

(4) Beaver Creek WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November. ~~[-]~~

(b) ~~[-]~~

(a) The limit shall be one (1) deer during the quota hunt. ~~[-]~~

(c) ~~[-]~~

(b) The crossbow season shall be open under statewide requirements. ~~[- and]~~

(d) ~~[-]~~

(e) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(5) Boatwright WMA. The area shall be open under statewide requirements, except that:

(a) On the Swan Lake Unit the archery and crossbow season shall be open under statewide requirements through October 14; and

(b) The [Open under statewide requirements except that on the Swan Lake Unit the archery and crossbow seasons shall be open under statewide requirements through October 14, and the] October youth deer season shall be open under statewide requirements.

(6) Cedar Creek Lake WMA. The crossbow season shall be open under statewide requirements.

(7) Clay WMA.

(a) On the main tract, crossbow and youth firearm seasons shall be open under statewide requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2:049. ~~[-]~~ ~~[-]~~

(b) The remainder of the WMA shall be open under statewide requirements for the archery, crossbow, and youth seasons, except during the quota deer hunt. ~~[-]~~ ~~[-]~~

(c) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November. ~~[-]~~ ~~[-]~~

(d) A quota hunt participant shall be given one (1) preference point for each female deer checked-in. ~~[- and]~~

(e) Hunters drawn for the quota hunt may harvest up to four (4) deer, only one (1) of which may be antlered.

(8) Dewey Lake WMA.

(a) The crossbow and youth firearm seasons shall be open under statewide requirements. ~~[-]~~ ~~[-]~~

(b) The use of firearms shall be prohibited for deer hunting on the portion of the area extending southward from the dam to Shoreline Campground Number One, and including all property from the WMA boundary downslope to the lake edge. ~~[- and]~~ ~~[-]~~

(c) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(9) Dix River WMA. The crossbow, youth firearm, and muzzle-loader seasons shall be open under statewide requirements.

(10) Fishtrap Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning on the Saturday before Thanksgiving. ~~[-]~~

(b) The limit for the quota hunt shall be one (1) deer. [- and]

(c) ~~[-]~~ The limit shall be one (1) deer.

(b) The crossbow and youth firearm season shall be open under statewide requirements.

(11) Grayson Lake WMA.

(a) An open youth hunt shall:

1. Be the first Saturday in November for two (2) consecutive days;

2. ~~Be limited to youth hunters age fifteen (15) and under;~~

3. ~~[Require check-in from noon to 8 p.m. Eastern Time on the day before the hunt or between 5:30 a.m. and 8 p.m. Eastern Time on hunt days;~~

3. ~~[-]~~ ~~[-]~~ Check-out as follows:

a. ~~If [When] finished hunting;~~

b. ~~If the hunter's bag limit is reached; or~~

c. ~~By 8 p.m. Eastern Time on the final day of the hunt.~~

4. Have a two (2) deer bag limit, only one (1) of which may be an antlered deer; and

3. ~~5. [-]~~ ~~Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;~~

6. ~~Have bonus deer permits apply. [- and]~~

(b) A person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt, except to:

1. Travel through the WMA on an established public road; or

2. Use an area designated as open by signs.

(c) ~~7. Except to travel through Grayson Lake WMA on an established public road or to use an area designated open by a sign, a person who has not checked in shall not enter the Grayson Lake WMA during the open youth hunt.~~

(b) The property of Camp Webb shall be open for a mobility-impaired deer hunting event during the first weekend of October as established in 301 KAR 3:110. ~~[-]~~

(d) ~~[-]~~

(e) The crossbow hunt shall be from the first Saturday in September through the third Monday in January, except during the November open youth hunt. ~~[- and]~~

(e) ~~[-]~~

(d) The statewide youth firearm season shall be open under statewide requirements.

(12) Green River Lake WMA and Dennis-Gray WMA.

(a) The crossbow season shall be open under statewide requirements. ~~[-]~~ ~~[-]~~

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November. ~~[-]~~ ~~[-]~~

(c) Fifteen (15) openings shall be reserved in the quota hunt for mobility-impaired persons. ~~[-]~~ ~~[-]~~

(d) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches. ~~[- and]~~ ~~[-]~~

(e) The Green River Lake and Dennis-Gray WMAs [For the purposes of check-in and check-out times, the Green River Lake WMA] shall be considered to be located in the Eastern Time Zone.

(13) Higginson-Henry WMA.

(a) The youth firearm deer season shall be open under statewide requirements. ~~[-]~~ ~~[-]~~

(b) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches. ~~[- and]~~

(c) A hunter shall not take [no] more than one (1) deer from the WMA per license year.

(14) J.C. Williams WMA. The crossbow season shall be open under statewide requirements.

(15) Kentucky River WMA. The crossbow and youth firearm seasons shall be open under statewide requirements.

(16) Kleber WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for [as follows]:

1. ~~[The first quota hunt shall be] [For] Two (2) consecutive days beginning the first Saturday in November; and~~

2. ~~[The second quota hunt shall be] [For] Two (2) consecutive days beginning the first Saturday in December.~~

(c) The youth firearm season shall be open under statewide requirements.

(17) Knobs State Forest WMA. The crossbow season shall be open under statewide requirements.

(18) Lake Barkley WMA shall be open under statewide re-

quirements except

(a) ~~[that]~~ The North Refuge is closed from November 1 to February 15; and

(b) Duck Island is closed from October 15 to March 15.

(19) Lewis County WMA.

(a) The modern firearm and youth firearm seasons shall be open under statewide requirements, except that the use of center-fire rifles and handguns shall be prohibited.~~.[:]~~

(b) The October muzzleloader season shall be open under statewide requirements.~~.[:]~~

(c) The crossbow season shall be open under statewide requirements.

(20) Livingston County WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not hunt deer with a modern gun during the modern firearm deer season.

(21) Curtis Gates Lloyd WMA. The crossbow season shall be open under statewide requirements.

(22) Mill Creek WMA.

(a) The crossbow season shall be open under statewide requirements.

(b) The quota hunt shall:

1. Be for two (2) consecutive days beginning the first Saturday in November; and~~The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.~~

2. Have a one (1) deer bag limit~~The limit shall be one (1) deer~~.

(23) Miller Welch-Central Kentucky WMA. The archery hunt shall be:

(a) On Wednesdays, from the first Saturday in September through December 17, except during scheduled field trials as posted on the area bulletin board; and

(b) December 18 through the third Monday in January.

(24) Mud Camp Creek WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(25) Mullins WMA. The crossbow season shall be open under statewide deer requirements.

(26) Ohio River Islands WMA.~~;~~ Stewart Island Unit.~~;~~

(a) The muzzleloader season shall be for two (2) consecutive days beginning the third Saturday in October.~~.[:]~~

(b) The archery season shall be from the first Saturday in September through October 14.~~.[:]~~

(c) The crossbow season shall be from October 1 through October 14.~~.[:]~~

(d) The October youth season shall be open under statewide requirements.~~.[:]~~

(e) The remainder of the WMA shall be open under statewide requirements.

(27) Paintsville Lake WMA.

(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.~~.[:]~~

(b) The crossbow and youth firearm seasons shall be open under statewide requirements.~~.[:]~~

(c) A person shall not use firearms for deer hunting on:

1. ~~[On]~~~~The use of firearms is prohibited for deer hunting on that portion of~~ The area extending eastward from the drainage of Glade Branch, along the north edge of the lake, to the No Hunting Area surrounding Rocky Knob Recreation Area and enclosing all property from the WMA boundary downslope to the lake edge; and

2. ~~[On]~~~~Also included are~~ The islands to the south and that portion of the area extending eastward along the south edge of the lake from the drainage of Shoal Branch to the No Hunting Area surrounding the dam and ranger station, and extending downslope to the edge of the lake.~~.[:]~~

(d) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(28) Peabody WMA.

(a) The crossbow, youth firearms, and muzzleloader seasons shall be open under statewide requirements.~~.[:]~~

(b) The modern firearm season shall be open under statewide requirements for ten (10) consecutive days beginning the second Saturday in November.

(29) Pennyrite State Forest-Tradewater WMA.

(a) The crossbow season shall be open under statewide requirements.~~.[:]~~

(b) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November.~~.[:]~~

(c) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(30) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:

(a) Shall not use a modern firearm;

(b) Shall not use an in-line muzzleloading gun;

(c) Shall not use a scope or optical enhancement; and

(d) May use a crossbow during the entire archery season.

(31) Dr. James R. Rich WMA.

(a) The crossbow season shall be open under statewide requirements, except during a quota hunt.

(b) The quota hunts shall be for ~~as follows~~:

1. ~~The first quota hunt shall be~~ For Two (2) consecutive days beginning the first Saturday in November; and

2. ~~For~~ Two (2) consecutive days beginning the first Saturday in December; and~~The second quota hunt shall be for two (2) consecutive days beginning the first Saturday in December.~~

(c) The youth firearm season shall be open under statewide requirements.

(32) Robinson Forest WMA.

(a) A person shall not hunt deer on the main block of Robinson Forest.~~.[:]~~

(b) The remainder of the WMA shall be open under statewide requirements.

(33) Sloughs WMA.

(a) On the Sauerheber Unit, the archery, crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open under statewide requirements through the end of modern firearm season.~~.[:]~~

(b) The remainder of the WMA shall be open under statewide requirements.

(34) South Shore WMA.

(a) The youth firearm, October muzzleloader, and modern firearm seasons shall be open under statewide requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.~~.[:]~~

(b) The archery and crossbow seasons shall be open under statewide requirements, except the area shall be closed November 15 through January 15.

(35) Sturgis WMA.

(a) The area shall be closed to the statewide archery season.~~.[:]~~

(b) There shall be a quota hunt for two (2) consecutive days beginning the first Saturday in November.~~.[:]~~

(c) There shall be an archery and crossbow quota hunt for two (2) consecutive days beginning the fourth Saturday in October.~~.[:]~~

(d) There shall be a youth quota hunt for two (2) consecutive days beginning the second Saturday in October.~~.[:]~~

(e) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(36) T.N. Sullivan WMA. The crossbow season shall be open under statewide requirements.

(37) R.F. Tarter WMA. The crossbow, youth firearm, and muzzleloader seasons shall be open under statewide requirements.

(38) Taylorsville Lake WMA.

(a) There shall be a quota hunt for:

1. Two (2) consecutive days beginning the first Saturday in November for antlerless deer;

2. Two (2) consecutive days beginning the first Saturday in December; and

3. Two (2) consecutive days beginning the second~~first~~ Saturday in January.

(b) Seven (7) openings shall be reserved in each quota hunt for mobility-impaired persons. ~~mobility-impaired persons~~.[:]

(c) The youth firearm season shall be open under statewide requirements.~~.[:]~~

(d) The crossbow season shall be open under statewide requirements.~~.[:]~~

(e) Applicants drawn for the antlerless-only quota hunt shall not

lose any accumulated preference points.

(39) Twin Eagle WMA. The crossbow season shall be open under statewide requirements.

(40) Twin Knobs Campground.

(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons. ~~[-and] [-]~~

(b) The area shall be closed to the statewide archery season.

(41) Paul Van Booven WMA.

(a) ~~The area shall be closed to vehicle access from an hour after sunset to an hour before sunrise, except that a hunter may retrieve downed game~~ [This area shall be closed to vehicle access from an hour after sunset until an hour before sunrise except that a hunter may retrieve downed game].

(b) The crossbow, muzzleloader, and youth firearm seasons shall be open under statewide requirements.

(c) ~~There shall be a quota hunt for~~ [The quota hunts shall be as follows:]

1. Five (5) consecutive days beginning the second Saturday in November; ~~and~~

2. Five (5) consecutive days beginning the Thursday following the second Saturday in November.

(d) ~~The bag limit for a quota hunt~~ [3. The limit] shall be one (1) deer.

(e) ~~A quota hunt participant~~ [4. Participants] shall not be required to check in and out ~~of the WMA~~, but shall telecheck harvested deer as specified in 301 KAR 2:172.

(f) ~~(d)~~ A hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(42) West Kentucky WMA.

(a) ~~All tracts shall be open under statewide requirements for the archery and crossbow seasons, except that:~~

1. ~~Tract 8A shall be closed to all deer hunting; and~~ [1. All tracts, except Tract 8A, shall be open under statewide requirements for the archery and crossbow seasons; except that]

2. All tracts shall be closed to archery and crossbow hunting during quota and firearm deer hunts. ~~[-]~~

(b) Tracts 1-6 shall be open to shotgun and muzzleloader hunters participating in the quota and open firearm deer hunts. Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts. ~~[-]~~

(c) ~~Tract 7 and "A" Tracts shall not be open for quota or firearm deer hunts.~~ [-]

(d) ~~The quota hunt shall be for five (5) consecutive days beginning the Saturday prior to Thanksgiving.~~ [-]

(e) ~~[-]~~

(c) ~~The quota hunt shall be for two (2) consecutive days beginning the third Saturday in November.~~

(d) ~~The firearms season shall:~~

1. ~~Be for three (3) consecutive days beginning the Saturday preceding the third Monday in January;~~ [Be the third Saturday after Thanksgiving for two (2) consecutive days;]

2. ~~Be limited to the first 200 hunters;~~

3. ~~Require a hunter to check in at a designated check station~~ [check-in] from 4 p.m. to 8 p.m. Central Time on the day before the hunt or between 4:30 a.m. and 7 p.m. Central Time on hunt days;

4. ~~Shall require a hunter to check out at the designated check station~~ [Check-out as follows:]

a. ~~When finished hunting;~~

b. ~~If the hunter's bag limit is reached; or~~

c. ~~By 7 p.m. Central time on the final day of the hunt.~~

5. ~~Have a two (2) deer bag limit, only one (1) of which may be an antlered deer;~~

6. ~~Have bonus deer permits apply; and~~

7. ~~Require every person to check in during the firearm deer season,~~ except for:

a. ~~A person traveling on an established public road; or~~

b. ~~A person in an area designated as open by signs.~~

(f) ~~Except to travel through West Kentucky WMA on an established public road or to use an area designated open by a sign, a person who has not checked in shall not enter the West Kentucky WMA during firearm season.~~

(e) ~~Firearm hunters shall not use centerfire rifles or handguns;~~

(g) ~~(f)~~ A person shall not carry a firearm in posted zones

pursuant to the agreement between the department and the U.S. Department of Energy.

(h) ~~(g)~~ Archery hunters shall check-in with U.S. Energy Corporation security personnel before hunting on the "A" Tracts. ~~[-]~~

(i) ~~[-]~~

(h) ~~(h)~~ Crossbow hunting is prohibited on the "A" Tracts. ~~[-]~~

(j) ~~[-]~~

(i) ~~(i)~~ A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches. ~~[-and]~~

(k) ~~A hunter~~ [At check-in prior to each day's hunt, hunters] shall sign in for the hunting tract of their choice and shall not hunt outside of that tract at the check in prior to each day's hunt.

(43) Yatesville WMA. The crossbow, youth firearm, muzzleloader, and modern firearm seasons shall be open under statewide requirements, except a person shall not take antlerless deer with a firearm during the modern firearm deer season.

(44) Yellowbank WMA.

(a) The crossbow and youth firearm deer seasons shall be open under statewide requirements. ~~[-and] [-]~~

(b) A deer hunter shall not take a deer with antlers that have an outside spread of less than fifteen (15) inches.

(45) Zilpo Campground.

(a) The quota hunt shall be on the second Saturday in December for mobility-impaired persons. ~~[mobility-impaired persons; and] [-]~~

(b) The area shall be closed to the statewide archery season.

Section 7. State Park Deer Seasons. The following state parks shall be open to deer hunting as specified below and according to requirements in Section 8 of this administrative regulation:

(1) Lake Barkley State Resort Park. Deer hunting shall be permitted on the first Tuesday of January for two (2) consecutive days.

(2) Greenbo Lake State Resort Park. Deer hunting shall be permitted on the first Tuesday of January for two (2) consecutive days.

(3) Green River Lake State Park.

(a) Archery and crossbow deer hunting shall be permitted beginning the second Thursday of December for four (4) consecutive days. ~~[-]~~

(b) Archery and crossbow deer hunting shall be permitted beginning the third Thursday of December for four (4) consecutive days. ~~[-and]~~

(c) A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.

(4) Yatesville Lake State Park. ~~(a)~~ Muzzleloading firearm, archery, and crossbow deer hunting shall be permitted under statewide deer requirements on the second Monday of December for three (3) consecutive days. ~~(b) Check-in at the park campground gate is required from noon to 8 p.m. Eastern Time on the second Sunday of December.~~

(5) Jenny Wiley State Resort Park.

(a) Deer hunting shall be permitted on the first Saturday of January for two (2) consecutive days. ~~[-]~~

(b) ~~The bag limit shall be two (2) deer, only one (1) of which may be antlered.~~ [-]

(c) ~~The hunt shall be open to the first fifteen (15) mobility-impaired persons who check in at the park on the day before the hunt.~~ [-]

(d) ~~A person who participates in the hunt shall comply with the requirements established in 301 KAR 3:026.~~ [-and]

(e) ~~(f)~~ The limit shall be one (1) deer.

(b) ~~The hunt shall be open to the first fifteen (15) mobility-impaired persons to check in at the park on the day before the hunt.~~

(c) ~~Persons who participate in the hunt shall comply with the requirements established in 301 KAR 3:026.~~

(d) ~~A deer hunter shall not take an antlered deer with antlers having an outside spread of less than fifteen (15) inches.~~

Section 8. State Park Deer Hunt Requirements. (1) Except for the open hunt at ~~[hunts at Jenny Wiley State Resort Park and]~~ Yatesville Lake State Park, a person shall not hunt on a state park unless ~~[except if]~~ [unless he or she:]

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(As Amended at ARRS, May 11, 2010)

(a) ~~Selected~~[Was selected] by a random drawing as described in Section 3 of this administrative regulation; or

(b) ~~The person is a member of a~~[is a member of the] successful applicant's hunting party.

(2) ~~Check in and check out requirement.~~

(a) A person participating in a state park hunt, except for the quota ~~hunt~~ [hunts] at Green River Lake State Park ~~[, Jenny Wiley State Resort Park,] and the~~ Yatesville Lake State Park open deer ~~hunt~~ [hunts], shall:

(a)[1-] Check in and check out as required in Section 5 of this administrative regulation;

(b)[2-] Furnish at check-in[:

~~1. Either a Social Security or draw confirmation number; and~~

~~2. [a. Either his or her Social Security or confirmation number, showing that he or she was a successful applicant for the hunt; and~~

~~b-] a driver's license or other form of government-issued identification; and~~

(c) Check in:

~~1. Between noon and 8 p.m. Eastern Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt; or~~

~~2. At the park the day before the hunt if hunting in the Jenny Wiley State Resort Park [open] deer hunt; and~~

(d) ~~Not be eligible to apply for a quota hunt the following year if the person does not check out as required in Section 5 of this administrative regulation.~~[3- Check in between noon and 8 p.m. Eastern Standard Time the day before the hunt at the state park campground if hunting in the Yatesville Lake State Park open deer hunt, or at the park the day before the hunt if hunting in the Jenny Wiley State Resort Park open deer hunt.

(b) ~~A person who does not check out as required above shall not be eligible to apply for a quota hunt the following year.]~~

(3) A person participating in a state park deer hunt shall:

(a) Comply with the provisions of 301 KAR 2:172; and

(b) ~~Check harvested deer daily at the designated park check station, except that the deer taken in the Green River Lake State Park quota hunt, and the open hunts at Jenny Wiley State Resort Park and Yatesville Lake State Park shall be telechecked according to requirements established in 301 KAR 2:172.~~[4- Check deer daily at the designated park check station, unless specified in subparagraph 2 of this paragraph Telecheck deer taken in the Green River Lake State Park quota hunts, Jenny Wiley State Resort Park, and Yatesville Lake State Park open deer hunts, as specified in 301 KAR 2:172.]

(4) A person participating in a state park deer hunt shall not:

(a) Take more than two (2) deer in a quota hunt, only one (1) of which may be antlered;

(b) Hunt over bait;

(c) Injure a tree by using:

1. A tree stand except a portable stand;

2. Climbing devices that nail or screw to the tree; or

3. Climbing spikes;[.]

(d) Leave a deer stand unattended for more than twenty-four (24) hours;

(e) Discharge a firearm within 100 yards of a maintained road or building; ~~and~~

(f) Hunt:

1. In an area posted as closed by signs; or

2. Outside park boundaries.

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 11, 2010

FILED WITH LRC: March 12, 2010 at 2 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

**401 KAR 8:020. Public and semipublic water ~~sys-~~
~~tems;~~[supplies] general provisions.**

RELATES TO: KRS ~~211.350~~[211.350]-211.392, 223.160-223.220, 224.10-100, 224.10-110, 224.16-050, ~~369,~~ 40 C.F.R. 141, [369,] 142.14, 142.15, 142.20, 142.21, 142.40-142.65, EO ~~2009-538~~ [2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 223.200, 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.3, 141.31, 141.75, 142.14, 142.15, 142.20, 142.21, 142.40-142.65, 42 U.S.C. 300f-300j-26, ~~EO 2009-538~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO ~~2009-538, effective June 12, 2009, establishes~~ [2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish] the new Energy and Environment Cabinet. This administrative regulation establishes the general provisions for regulating public and semipublic water supplies.

Section 1. A public or semipublic water system shall be subject to the requirements of 401 KAR Chapter 8, except those exempted in 40 C.F.R. 141.3[~~, effective July 1, 2007~~].

Section 2. (1) Public and semipublic water systems. A person shall not operate or commence operation of a public or semipublic water system except in compliance with the provisions of 401 KAR Chapter 8 and 40 C.F.R. 141[~~, effective July 1, 2007~~]. A water supply system constructed prior to November 11, 1990 may be continued in use, if the operation, maintenance, bacteriological, chemical, physical, and radiological standards comply with 401 KAR Chapter 8, or the system obtains a variance or exemption from those standards in accordance with 40 C.F.R. 141[~~, effective July 1, 2007~~].

(2)(a) A cross-connection shall be prohibited.

(b) The use of automatic devices, such as ~~a~~ reduced pressure zone back flow preventer and a vacuum breaker, may be approved to protect public health, in lieu of air gap separation.

(c) A combination of air gap separation and an automatic device shall be required if determined by the cabinet to be necessary due to the degree of hazard to public health.

(d) Every public water system shall determine if or where a cross-connection exists and shall immediately eliminate it.

(3) A bypass shall not be created or maintained without the prior written approval of the cabinet stating the approved circumstances for establishment of a bypass, its design, and the exact conditions for its use.

(4) An auxiliary intake shall not be used in direct connection with a public or semipublic water system except with prior written approval from the cabinet stating the emergency condition that necessitates the intake.

(5) The plumbing system serving the purification plant and auxiliary facilities shall discharge to a sewer system if available.

(a) If a sewer is not available, the connection shall be made to a sewage disposal facility approved pursuant to KRS Chapter 211.350 through 211.392 or 224.16-050.

(b) There shall not be connections between the sewer system and a filter backwash, filter-to-waste drain, or clearwell overflow line, unless an air gap is provided between the drain and overflow line and the sanitary storm sewer or natural drainage system, so as to preclude the possibility of back-up of sewage or waste into the drain or overflow line.

(6) The owner or operator of a public water system shall operate and maintain the facilities and systems of treatment, intake, and distribution to comply with the provisions of 401 KAR Chapter 8. Operation and maintenance includes effective performance, preventive maintenance, operator staffing and training pursuant to 401 KAR 8:030, ~~11:040, and 11:050~~ establishing representative sample points that comply with the requirements of 401 KAR Chapter 8, and adequate process controls for testing, including quality assurance procedures.

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water**

(7) Reports to the cabinet.

(a) The supplier of water shall provide a complete monthly operating report to the cabinet, which shall be received at the Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601 not later than ten (10) days after the end of the month of which the report is filed.

1. A completed report shall include:

- a. Volume of water treated;
- b. Type and amount of chemicals added;
- c. Test results appropriate to be reported by the plant; and
- d. The dated original signature, or equivalent, pursuant to KRS Chapter 369, of the owner or authorized agent.

2. A supplier of water shall submit the reports required by 40 C.F.R. 141.75(b) to the cabinet not later than ten (10) days after the end of each month the public water system serves water to the public.

3. **A public water system [systems]** shall report to the cabinet in accordance with 40 C.F.R. 141.31[-effective July 1, 2007].

(b) Reports of failure to comply. A public water system shall report to the cabinet within forty-eight (48) hours, by phone or in writing, the failure to comply with a provision of 401 KAR Chapter 8, including the failure to comply with monitoring requirements.

(c) Emergency reports.

1. If a public water system experiences a line break or loss of pressure as established in 401 KAR 8:150, Section 4(2)(e), loss of disinfection, or other event that may result in contamination of the water, the public water system shall immediately report to the cabinet by calling the Division of Water in Frankfort at (502) 564-3410 or the appropriate regional field office of the Division of Water.

2. If a report required by this paragraph is made during other than normal business hours, it shall be made through the twenty-four (24) hour environmental emergency telephone number, (800) 928-2380 [(502) 564-2380].

(8) Records to be maintained. **An owner or operator [Owners or operators]** of a public water system shall keep the records established in 40 C.F.R. 141.33[-effective July 1, 2007] on the premises or readily accessible to cabinet staff inspecting the system.

(9) Boil water and consumer advisories.

(a) Boil water advisories.

1. A public water system or semipublic water system ~~shall~~may issue boil water advisories if the system believes an advisory is warranted.

2. The cabinet may direct that a boil water advisory be issued upon:

- a. The reception of confirmed positive bacteriological results including E. coli or fecal coliform in at least one (1) sample; or
- b. Other circumstances that warrant an advisory for the protection of public health.

3. The cabinet may, if circumstances warrant for the protection of public health, issue a boil water advisory directly, rather than rely on a public or semipublic water system to issue the advisory.

4. Boil water advisories shall remain in effect until the cabinet approves the lifting of the advisory based on bacteriological results showing coliform bacteria are not present in the water.

(b) Consumer advisory.

1. The cabinet may issue a consumer advisory if:

a. Conditions within a public water system or semipublic water system indicate a possible adverse health effect from consumption of the water distributed by the system; or

b. Other information of interest to the consumer exists.

2. The advisory shall notify affected persons of a required or recommended action.

(c) A public or semipublic water system shall:

1. Immediately notify the local health department that serves the area affected if a boil water advisory or consumer advisory is issued.

a. The notification may be made by telephone or fax machine for an occurrence during normal business hours.

b. For an occurrence after normal business hours, the public or semipublic water system shall notify the affected local health department in a manner agreed upon by the system and affected health department; or

2. Develop a protocol with a local health department that describes when and how the system shall notify the affected health department if the system issues a boil water advisory or consumer advisory. The protocol shall address:

a. For which types of advisories the system shall notify the affected health department;

b. What procedures shall be used to notify[,] and under what circumstances;

c. How soon after the occurrence the notification shall be made; and

d. To whom the notification shall be made, during and after business hours.

(10) How to issue advisory.

(a) **A boil water advisory or consumer advisory [Boil water advisories and consumer advisories]** shall be issued through newspapers, radio, television, or other media having an immediate public impact.

(b) As a health and safety measure, the water system shall repeat the notification during the period of imminent danger at intervals that maintain public awareness.

(c)1. The advisory shall be readily understandable and shall include instructions for the public, as well as an explanation of the steps being taken to correct the problem.

2. Boiling instructions shall caution to boil water to be used for consumption by boiling the water for at least three (3) minutes at a rolling boil.

(11) Maps.

(a) A public or semipublic water system shall have on the premises, or readily accessible to cabinet staff inspecting the system, an up-to-date map of the distribution system. The map shall, at a minimum, show:

1. Line size;
2. Cutoff valves;
3. Fire hydrants;
4. Flush hydrants;
5. Tanks;
6. Booster pumps;
7. Chlorination stations;
8. Connection to emergency or alternative sources;
9. Wholesale customer master meters; and
10. Type of piping material in the distribution system and its location.

(b)1. If a public water system is not able to comply with the requirements of paragraph(a) of this subsection the system may petition the cabinet to modify this requirement.

2. The petition for modification shall state specifically what portion of the requirements of paragraph (a) of this subsection is not practical and why.

(12) Operation and maintenance manual.

(a) Each public water system shall develop and keep on the premises, for operators and employees of the system, an operation and maintenance manual that includes:

1. A detailed design of the plant;
2. Daily operating procedures;
3. A schedule of testing requirements designating who is responsible for the tests; and

4. Safety procedures for operation of the facility, including storage and inventory requirements for materials and supplies used by the facility.

(b) The operation and maintenance manual shall be updated as necessary, but not less than annually, and shall be available for inspection by the cabinet.

(c) Public water systems serving fewer than 100 people or thirty (30) service connections may request that the cabinet waive the requirements of paragraphs (a) and (b) of this subsection. The request shall be in writing and any waiver granted by the cabinet shall be in writing and be retained by the public water system for examination by cabinet personnel.

(13) Flushing recommended.

(a) To protect public health, a distribution system may be thoroughly flushed at least twice a year, usually in the spring and fall. The purpose of systematic flushing is to reduce turbidity created from the scouring of accumulated sediment within the water lines.

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1. Flushing shall start at the hydrants nearest the source of supply and proceed in an outward direction to the end of each main.

2. Flushing shall continue at each hydrant until all traces of turbidity and color are gone.

3. Hydrants shall be opened and shut slowly to prevent damage from water hammer.

(b) In addition to the regularly scheduled flushing, the following conditions shall indicate a need to flush the entire system:

1. Turbidity within the distribution system greater than five (5) or one (1) nephelometric turbidity units, or NTU, as applicable to the system;

2. An inability to maintain an adequate residual of a disinfection agent in any part of the system; or

3. A heterotrophic plate count, or HPC, in excess of 500.

(c) Other indicators that flushing may be necessary shall be taste and odor complaints, color of water, contaminated water samples, or line repairs.

(14) A person shall not introduce into the water supply system a substance that may have a deleterious physiological effect, or for which physiological effects may not be known.

(15) Certified lab analysis required. For the purpose of determining compliance with the sampling requirements of 401 KAR Chapter 8, samples shall be analyzed by a laboratory certified by the cabinet as prescribed in 401 KAR 8:040, except that measurements for turbidity, disinfectant residuals, and other parameters specified by 40 C.F.R. 141.28 and 141.131 may be performed by a certified operator or an individual under the supervision of a certified operator.

(16) Right of entry. The cabinet may enter an establishment, facility, or other property of public and semipublic water supplies in order to determine whether the supplies have acted or are acting in compliance with applicable laws or regulations that the cabinet has the authority to enforce.

(a) Entry may include collection of water samples for laboratory analyses and inspection of records, files, papers, processes, controls and facilities required to be kept, installed, or used under the provisions of 401 KAR Chapter 8.

(b) The cabinet or its authorized agent may cause to be tested a feature of a public water system, including its raw water source, to determine compliance with applicable legal requirements.

(17) Recommended practices for water supply reservoirs to be used for drinking water. The following practices may be employed by water systems that have a lake primarily used as a source of raw drinking water:

(a) Prohibition of swimming, water skiing, and other contact sports;

(b) Prohibition of large motor-driven craft or any craft with toilets;

(c) A requirement that an area at least 100 feet wide from the upper pool elevation be kept clear of all sources of potential contamination such as septic tanks, drain fields, livestock, and barns;

(d) Prohibition of effluent from sewage treatment plants being discharged into the lake;

(e) Picnicking may be permitted around the lake if plans for the development of a picnic area meet regulatory requirements of the cabinet; and

(f) Implementation of a nonpoint source pollution control plan.

(18) Water treatment chemicals and system components. Chemical additives and protective materials, such as paints and linings, may be used by a water system if they meet the requirements established in the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works.

(19) Disposal of chlorinated water. Chlorinated water resulting from disinfection of treatment facilities and new, repaired, or extended distribution systems shall be disposed in a manner that shall not violate 401 KAR 10:031.

(20) Water loading stations. A public water system that provides water loading stations for the purpose of providing water to water hauling trucks or other bulk water devices shall construct the stations to conform to the standards in the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers' Recommended Standards for Water Works.

Section 3. The cabinet shall maintain records and submit reports as established in 40 C.F.R. 142.14 and 142.15~~[- effective July 1, 2007].~~

Section 4. A public water system may receive a variance or exemption from some provisions of 401 KAR Chapter 8 only in accordance with 40 C.F.R. 141.4~~[- 142.20, 142.21, 142.40-142.65, and 142.301-142.313, effective July 1, 2007].~~

Section 5. A public water system may use noncentralized treatment devices only in accordance with 40 C.F.R. 141.100 or bottled water only in accordance with 40 C.F.R. 141, Sections 141.101~~[- effective July 1, 2007].~~

Section 6. Incorporation by Reference. (1) "Recommended Standards for Water Works, 2003," A Report of the Committee of the Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available ~~[may also be obtained through]~~ the division's Web site at www.water.ky.gov/dw.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: March 11, 2010

FILED WITH LRC: March 12, 2010 at 1 p.m.

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (As Amended at ARRS, May 11, 2010)

401 KAR 8:200. Microbiological monitoring.

RELATES TO: KRS 224.10-110~~[224.110-110]~~, 40 C.F.R. 141.21, 141.52, 141.63, EO 2009-538 ~~[2008-507, 2008-531]~~

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.21, 42 U.S.C. 300f-300j-26, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) requires ~~[directs]~~ the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009, establishes ~~[2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection and establish]~~ the new Energy and Environment Cabinet. This administrative regulation establishes a schedule and method for sampling drinking water to test for bacteriological contaminants and establishes maximum contaminant levels for bacteria. This administrative regulation also specifies requirements if tests show maximum contaminant levels have been exceeded. This administrative regulation is more stringent than the corresponding federal regulation in that a minimum of two (2) monitoring samples for total coliforms shall be taken each month.

Section 1. A public water system shall meet the requirements established in 40 C.F.R. 141.21, 141.52, and 141.63~~[- effective July 1, 2007.]~~ except that a public water system shall take a minimum of two (2) coliform bacteria samples each month the system is in operation.

Section 2. A semipublic water system shall take a minimum of two (2) total coliform bacteria samples each month the system is in operation.

Section 3. Population served shall be determined by the appropriate method established in this section.

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(1) A supplier of water serving an area defined by an official census count or population projection shall use the most recent census count or official population projection.

(2) If a supplier of water serves an area without available official figures for population of the area served, the population served shall be considered to be the greater of:

(a) A factor of not less than 2.97 times the number of residential meters; or

(b) A factor of not less than 2.47 times the total number of residential, commercial, and industrial service connections.

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (As Amended at ARRS, May 11, 2010)

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, and maximum contaminant levels.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.11, 141.23, 141.24, 141.40, 141.41, 141.50, 141.51, 141.61, 141.62, EO 2009-538 [2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.11, 141.23, 141.24, 141.40, 141.41, 141.50, 141.51, 141.61, 141.62, 42 U.S.C. 300f-300j-26, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) requires [authorizes] the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009, establishes [2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish] the new Energy and Environment Cabinet. This administrative regulation establishes sampling and analytical requirements for certain inorganic and organic chemicals and sets maximum contaminant levels for those chemicals which, if exceeded, may affect public health.

Section 1. A public water system shall meet the requirements for inorganic chemicals in accordance with 40 C.F.R. 141.11, 141.23, 141.41, 141.51, and 141.62[, effective July 1, 2007].

Section 2. A public water system shall meet the requirements for organic chemicals in accordance with 40 C.F.R. 141.24, 141.50, and 141.61[, effective July 1, 2007].

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (As Amended at ARRS, May 11, 2010)

401 KAR 8:300. Lead and copper.

RELATES TO: 40 C.F.R. 141.42, 141.43, 141.80-141.91, 141.154, 42 U.S.C. 300f-300j-26, EO 2009-538 [2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.43, 141.80-141.91, 42 U.S.C. 300f-300j-26, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) require[authorize] the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009, establishes [2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish] the new Energy and Environment Cabinet. This administrative regulation bans lead in drinking water facilities and provides standards for lead and copper in drinking water.

Section 1. A public water system shall meet the requirements for control of lead corrosivity and copper as established in:

(1) 40 C.F.R. 141.42, 141.43, 141.82, and 141.91[, effective July 1, 2007]; and

(2) 40 C.F.R. 141.80, 141.81, 141.83 through 141.90, and 141.154[, effective December 10, 2007].

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (As Amended at ARRS, May 11, 2010)

401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.

RELATES TO: KRS 224.10-100, 224.10-110, EO 2009-538 [2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.53, 141.54, 141.64, 141.65, 141.130-141.135, 141.600-141.605, 141.620-141.629, 42 U.S.C. 300f-300j-26, EO 2009-538 [2008-507, 2008-531]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) require the cabinet to enforce administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009, establishes [2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish] the new Energy and Environment Cabinet. This administrative regulation establishes the maximum contaminant levels for total trihalomethanes and haloacetic acid five (5) to limit the levels of known and unknown disinfection by-products.

Section 1. (1) A public [community or noncommunity] water system [that adds a chemical disinfectant as a part of the drinking water treatment process] shall meet the requirements established in 40 C.F.R. 141.130 through 141.135, 141.600 through 141.605, 141.620 through 141.629, 141.53, 141.54, 141.64, and 141.65.

(2) For the purposes of meeting the requirements of 40 C.F.R. 141.130 through 141.135 a consecutive water system [systems] shall monitor in the manner established in Section 2 of this administrative regulation.

Section 2. A consecutive water system[systems] shall monitor for trihalomethanes and HAA5 as established in this section.

(1) For purposes of determining the applicability and compliance dates, the sum of the populations of the system producing the water and the system purchasing the water shall be used.

(2) Producers.

(a)1. A public water system that produces water and that provides water to another system shall be responsible for monitoring

throughout the joint distribution system, which shall consist of the distribution systems of both the producing system and all purchasing systems.

2. Monitoring shall be performed pursuant to this administrative regulation at a point in the joint distribution system that reflects the longest period of retention.

(b)1. If more than one (1) system produces water sold to a distribution system, monitoring shall be divided between or among the producing systems by a plan that reflects the likely flow of each producing system's water.

2. A monitoring plan for total trihalomethanes and HAA5s shall be submitted by all producing systems and shall be approved by the cabinet pursuant to 40 C.F.R. 141.132(f).

(3) Purchasers.

(a)1. A system that purchases water shall alter distribution operation and maintenance practices necessary to alleviate any potential exceedance of the MCL for TTHM or HAA5 anywhere in its distribution system.

2. The altered practices may include line flushing and replacement, changes to points of disinfection, elimination of points of disinfection, tank turnover practices, or other changes to facilitate reductions in levels of contamination.

(b)1. A purchasing system shall cooperate in the development of a monitoring plan required from the producing system as established in subsection (2) of this section.

2. A purchasing system shall monitor for maximum residual disinfectant levels at the same points in the distribution system and at the same time as total coliforms are sampled as established in 401 KAR 8:200.

LEONARD K. PETERS, Secretary

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ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(As Amended at ARRS, May 11, 2010)

401 KAR 8:550. Radionuclides.

RELATES TO: KRS 224.10-100, 224.10-110, 40 C.F.R. 141.25, 141.26, 141.55, 141.66, EO 2009-538 [2008-507, 2008-534]

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.10-110(2), 40 C.F.R. 141.25, 141.26, 141.55, 141.66, 42 U.S.C. 300f-300j-26, EO 2009-538

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110(2) requires[authorizes] the cabinet to enforce the statutes and administrative regulations promulgated by the secretary for the regulation and control of the purification of water for public and semipublic use. EO 2009-538, effective June 12, 2009, establishes [2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish] the new Energy and Environment Cabinet. This administrative regulation establishes the requirements for sampling and testing procedures for radionuclides and establishes maximum contaminant levels for safe drinking water.

Section 1. A community water system shall meet the requirements for radionuclides in accordance with 40 C.F.R. 141.25, 141.26, 141.55, and 141.66[, effective July 1, 2007].

LEONARD K. PETERS, Secretary

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TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Drivers License
(As Amended at ARRS, May 11, 2010)

601 KAR 12:060. Hardship driver's license.

RELATES TO: KRS 189A.010, 189A.070, 189A.107, 189A.400-189A.460, 434.650-670, 434.690, 506.120, 514.030-060, 514.070-090, 514.110, 514.120

STATUTORY AUTHORITY: KRS 189A.400-189A.460, 532.356

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.400 through 189A.460 authorizes[provides for] the issuance of a hardship driver's license to a person whose driving privilege has been withdrawn for a conviction of KRS 189A.010. KRS 532.356 authorizes[provides for] the issuance of a hardship driver's license to a person whose driving privilege has been withdrawn until restitution is paid due to a conviction under the following statutes: KRS 434.650-670, 434.690, 506.120, 514.030-060, 514.070-090, 514.110, and 514.120. The [district] court withdrawing the person's driving privilege has exclusive jurisdiction to decide whether the person shall be issued a hardship driver's license, and[and] the hardship driver's license shall[is to] be issued by the Transportation Cabinet. The circuit court clerks, acting on behalf of the Kentucky Transportation Cabinet, shall issue the hardship driver's license. KRS 189A.460 requires the Transportation Cabinet to promulgate administrative regulations relating to the implementation of the hardship driver's license provisions of KRS Chapter 189A. [Therefore,] This administrative regulation sets forth procedures to be followed in applying to the circuit court clerk for a hardship driver's license and for the circuit clerk to issue the license. It further sets forth the fee for the hardship driver's license, provides for cancellation of a hardship driver's license, and allows for a replacement or a renewed hardship driver's license to be issued.

Section 1. Issuance of Hardship Driver's License. (1) A person who has been given a court order authorizing the issuance of a hardship driver's license [by the district court which withdrew his driving privilege,] shall apply for [the issuance of] the license at the driver licensing issuance office of the circuit court clerk in his or her county of residence.

(2) The license [to be issued by the circuit clerk] shall be a photo license clearly designated "hardship" on the front [face] of the license.

(3) A person [who is] arrested for an alcohol or substance offense[He] shall not be issued a hardship driver's license sooner than the expiration of the minimum license suspension period imposed by the court as established in [accordance with] KRS 189A.010(6), 189A.070, 189A.107, or 189A.410.

(4)(a) A hardship order may be issued immediately after a license suspension for failure to pay restitution as established in KRS 532.356.

(b) The hardship license shall be valid for one (1) year and may [shall] be renewed yearly from the date of issuance until restitution is completed.[(c) The hardship license may be renewed one (1) year from the date of issuance.]

(5) If the court requires an ignition interlock device as a condition of the hardship license, 601 KAR 2:030 shall be applicable.

Section 2. Submission of Withdrawal Notice. (1) If[When] applying for the issuance of the hardship driver's license, the applicant shall present:

(a) The [district] court order granting hardship driving privilege;
(b) Except as established in subsection (2) of this section, the driving privilege withdrawal notice from the Transportation Cabinet, Division of Driver Licensing;[.] and

(c) Some form of identification to the driver licensing issuance office.

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(2) If the applicant does not have the withdrawal notice from the Transportation Cabinet, Division of Driver Licensing, the circuit court clerk shall contact the Division of Driver Licensing to determine the date of expiration of the hardship driver's license.

Section 3. Eligibility. (1) ~~[Only]~~ A person whose Kentucky operator's license has been suspended or revoked as a result of the current charge of driving while under the influence of alcohol or other impairing substances or a person required to make restitution after a conviction of KRS 434.650-670, 434.690, 506.120, 514.030-060, 514.070-090, 514.110, or 514.120 may be issued a hardship driver's license.

(2) If the applicant for a hardship driver's license is a new Kentucky resident ~~whose~~~~[who had his]~~ driving privilege ~~has been~~ withdrawn in another jurisdiction, he ~~or she~~ shall not be eligible for a hardship driver's license until the jurisdiction imposing the driving privilege withdrawal provides a statement that the person is eligible to have his ~~or her~~ driving privilege restored.

Section 4. Hardship Driver's License Fee. (1)(a) The applicant for a hardship driver's license shall pay a five (5) dollar fee pursuant to KRS 189A.450 to the circuit court clerk for his photo hardship driver's license.

(b) ~~[After receipt of the fee,]~~ The circuit court clerk shall forward the fee to the Transportation Cabinet in accordance with KRS 186.490.

(2)(a) A renewed hardship license shall be available at a cost of five (5) dollars per year for a driver who has not completed restitution as required in KRS 532.356.

(b) A driver whose driving privilege has been suspended for five (5) years or more because he or she has failed to make restitution shall not be required to start over as a new driver.

Section 5. Hardship Driver's License Attachments. The circuit court clerk shall:

(1)(a) Attach the yellow copy of the court order to the hardship driver's photo license before it is given to the applicant; ~~and~~

(b) ~~[-]~~ The hardship driver's license shall not be considered complete or official unless the copy of the court order is attached;

(2) Attach a copy of the court order requiring interlock device installation, if applicable; and

(3) Note on the court order ~~form~~~~[from]~~ that additional instructions are attached if the orders, instructions, or restrictions of the court are so extensive that they cannot be written in full. The additional instructions shall be certified or attested and attached to the hardship driver's license in addition to the yellow copy of the court order form in order for the license to be considered complete or official.

Section 6. Replacement Hardship Driver's License. If a valid hardship driver's license is lost or destroyed, the licensee may apply for a replacement photo license by presenting another copy of the court order and a five (5) dollar fee to the circuit court clerk in the county of ~~[his]~~ residence.

Section 7. Cancellation of Hardship Driver's License. (1) The ~~[district]~~ court withdrawing the ~~licensee's~~~~[person's]~~ driving privilege ~~[as a result of the violation of KRS 189A.040]~~ has exclusive jurisdiction over the issuance of a hardship driver's license.

(2) If the person is convicted of an additional offense ~~that~~~~[which]~~ would cause the withdrawal of his ~~or her~~ driving privilege, or reported by a court to have not satisfied an outstanding citation ~~that~~~~[which]~~ would cause the withdrawal of ~~the licensee's~~~~[his]~~ driving privilege, the Transportation Cabinet shall cancel the hardship driver's license and notify the licensee.

Section 8. Decal Requirements. (1) The decal required by KRS 189A.430 shall be placed in the lower corner of the rear window on the driver's side in a motor vehicle ~~that~~~~[which]~~ has a rear window.

(2) If the motor vehicle does not have a rear window, the decal shall be placed so that it is plainly visible from the rear of the motor vehicle.

GERI GRIGSBY, Acting Commissioner

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: October 12, 2009

FILED WITH LRC: October 14, 2009 at 11 a.m.

CONTACT PERSON: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

EDUCATION CABINET Board of Education Department of Education (As Amended at ARRS, May 11, 2010)

702 KAR 3:030. Insurance requirements.

RELATES TO: KRS **Chapter 45A**, 160.105

STATUTORY AUTHORITY: KRS 156.070, 160.105, **324.045**,

Chapter 42A

NECESSITY, FUNCTION, AND CONFORMITY: KRS **156.070(4)** authorizes the Kentucky Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 156.070(5) requires the board to promulgate administrative regulations relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education. KRS 160.105 requires the board to promulgate administrative regulation requiring each school district to [160.105 requires the Kentucky Board of 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 level of insurance coverage needed for school district buildings and structures.

Section 1. (1) A local board of education shall procure insurance coverage, 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 building and its contents shall be insured for an amount equal to 100 percent of the replacement cost as shown on the schedule of values certified by the Kentucky Department of Education or as determined through a certified replacement cost appraisal of the building and its contents performed by an appraiser experienced in appraising commercial or governmental property and licensed to perform appraisal services in Kentucky pursuant to KRS 324A.045, and each policy covering the 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) The following minimum sublimit shall be required:

(a) Ordinance and law - \$5,000,000.~~[-]~~

(b) Debris removal - \$1,000,000.~~[-]~~ and

(c) Extra expense - \$5,000,000.

(5) 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 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 at least fifty (50) percent of total replacement costs.

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 maximum ~~[minimum]~~ of eighty (80) percent coinsurance;

- (2) A per occurrence deductible on all perils not to exceed five (5) percent of the prior year's capital outlay allotment or \$25,000 [\$10,000], whichever amount is smaller; and
(3) A replacement cost endorsement.

Section 3. A building requiring insurance and containing a steam boiler 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 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. 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 a school building cannot be insured on a replacement cost basis, the policy insuring the building shall carry an 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 after having advertised for bids, if bids are required by KRS Chapter 45A or 424.

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

JOE BROTHERS, Chairperson

APPROVED BY AGENCY: March 15, 2010

FILED WITH LRC: March 15, 2010 at noon

CONTACT PERSON: Kevin C. Brown, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, May 11, 2010)**

815 KAR 20:191. Minimum fixture requirements.

RELATES TO: KRS 58.200, 318.160[~~EO-2009-535~~]

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department office, after approval by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. KRS 58.200(2) requires newly-constructed public buildings to be equipped with twice the number of restroom facilities for use by women as is provided for use by men. [~~EO-2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings and Construction, and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes the minimum plumbing fixture requirements for buildings in Kentucky.

Section 1. Definitions. (1) "Developed travel distance" means the length of a pathway measured along the center line of the path.

(2) "Modular" means a structure or component [~~thereof~~] that is wholly or in substantial part fabricated in an off-site [~~of-site~~] manufacturing facility for installation at the building site.

Section 2. General Requirements. (1) In a building accommodating males and females, it shall be presumed that the occupants will be equally divided between males and females, unless otherwise denoted.

(2) The occupancy load factor used to determine the total number of plumbing fixtures required in a building shall be the load [~~that~~] denoted in the Kentucky Building Code, incorporated by reference in 815 KAR 7:120.

(3) All types of buildings shall be provided with toilet rooms on each level or floor, unless the department determines that:

- (a) Separate facilities on each level or floor are unnecessary; and
 - (b) Toilet rooms on every other level or floor shall be sufficient.
- (4) Toilet rooms for males and females shall be clearly marked.

Section 3. Toilet Floor Construction Requirements. (1) Floors in toilet rooms [~~providing facilities for use by the general public or employees~~] shall be constructed of nonabsorbent materials.

(2) If a wood floor is used, the wood floor shall be covered by other nonabsorbent materials.

(3) If two (2) or more fixtures that receive human waste are installed, the toilet room shall have at least one (1) floor drain and one (1) accessible hose bibb.

Section 4. Facilities for Stages. (1) A separate water closet and lavatory shall be provided for males and females in the stage area.

(2) A drinking fountain shall be provided in the stage and auditorium area.

Section 5. Theaters, Assembly Halls, and Similar Occupancies. Separate toilet rooms for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation, [~~and as follows:~~]

(1) Water closets and urinals for males.

(a) Water closets for males shall be installed in the following proportions:

- 1. One (1) water closet for each 100 males;
- 2. Two (2) water closets for 101 to 200 males;
- 3. Three (3) water closets for 201 to 400 males; and
- 4. If over 400 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof.

(b) Urinals for males shall be installed in the following proportions:

- 1. One (1) urinal for eleven (11) to 100 males;
- 2. Two (2) urinals for 101 to 300 males;
- 3. Three (3) urinals for 301 to 600 males; and
- 4. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(2) Water closets for females. Water closets for females shall be installed in the following proportions:

- (a) One (1) water closet for each fifty (50) females;
- (b) Two (2) water closets for fifty-one (51) to 100 females;
- (c) Three (3) water closets for 101 to 150 females;
- (d) Four (4) water closets for 151 to 200 females; and
- (e) If over 200 females, four (4) water closets plus one (1) additional water closet for each additional 150 females or fraction thereof.

(3) Lavatories for Males or Females. Lavatories shall be installed in the following proportions:

- (a) One (1) lavatory for up to 100 persons [~~males or females~~];
- (b) Two (2) lavatories for 101 to 200 persons;
- (c) Three (3) lavatories for 201 to 400 persons;
- (d) Four (4) lavatories for 401 to 750 persons; and
- (e) If over 750 persons, four (4) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof.

(4) Sinks. There shall be one (1) service sink or slop sink on each floor.

(5) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity or fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person per each fifteen (15) square feet of area.

(6) Drinking fountain. A drinking fountain shall be provided on each floor for each 500 persons or fraction thereof.

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(7) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 6. Libraries, Museums, and Art Galleries. Separate toilet facilities for males and females shall be provided as established in this section and in Sections 2 through 4 of this administrative regulation~~[- and as follows]~~:

(1) There shall be one (1) water closet and one (1) lavatory for each 100 females or fraction thereof.

(2) Except as established in subsection (7) of this section, there shall be one (1) water closet and one (1) lavatory for each 200 males or fraction thereof.

(3) There shall be:

(a) One (1) urinal for eleven (11) to 200 males;

(b) Two (2) urinals for 201 to 400 males;

(c) Three (3) urinals for 401 to 600 males; and

(d) If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof.

(4) There shall be one (1) service sink or slop sink on each floor.

(5) A drinking fountain shall be provided for each 500 persons or fraction thereof.

(6) Number of fixtures. The number of fixtures shall be based upon the maximum seating capacity of ~~or~~ fixed seats. If fixed seats are not provided, the basis for determining the capacity shall be one (1) person for each fifteen (15) square feet of area.

(7) Urinals may be substituted for water closets for males if:

(a) The substituted urinals do not exceed one-third (1/3) of the required total number of water closets; and

(b) The minimum number of urinals is installed.

(8) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 7. School Buildings Not Including Higher-Education Facilities. A school building shall be in compliance with the requirements established in 702 KAR 4:170 and this section.

(1) Drinking fountains.

(a) A drinking fountain shall be provided on each floor and wing of a building.

(b) One (1) additional drinking fountain shall be provided for each seventy-five (75) pupils or fraction thereof.

(c)~~(b)~~ The drinking fountains shall be equipped with:

1. A protective cowl; and

2. The orifice, which shall be one (1) inch above the overflow rim of the fountain.

(2) Elementary through secondary level school buildings shall be provided with the following:

(a) Water closets for males shall be installed in the following proportions:

1. One (1) water closet for up to twenty-five (25) pupils;

2. Two (2) water closets for twenty-six (26) to 100 pupils; and

3. If over 100 pupils, two (2) water closets plus one (1) additional water closet for each additional 100 pupils or fraction thereof~~[-]~~;

(b) Urinals for males shall be installed in the following proportions:

1. One (1) urinal for up to twenty-five (25) pupils;

2. Two (2) urinals for twenty-six (26) to fifty (50) pupils;

3. Four (4) urinals for fifty-one (51) to 100 pupils;

4. Six (6) urinals for 101 to 200 pupils;

5. Eight (8) urinals for 201 to 300 pupils;

6. Ten (10) urinals for 301 to 400 pupils;

7. Twelve (12) urinals for 401 to 500 pupils; and

8. If over 500 pupils, twelve (12) urinals plus one (1) additional urinal for each additional fifty (50) pupils or fraction thereof in excess of 500~~[-]~~;

(c) Water closets for females shall be installed in the following proportions:

1. Two (2) water closets for up to twenty-five (25) pupils;

2. Three (3) water closets for twenty-six (26) to fifty (50) pupils;

3. Six (6) water closets for fifty-one (51) to 100 pupils;

4. Eight (8) water closets for 101 to 200 pupils;

5. Ten (10) water closets for 201 to 300 pupils;

6. Twelve (12) water closets for 301 to 400 pupils;

7. Fourteen (14) water closets for 401 to 500 pupils; and

8. If over 500 pupils, fourteen (14) water closets plus one (1) additional water closet for each additional forty (40) pupils or fraction thereof; and ~~[in excess of 500.]~~

(d)1. Lavatories for male and female pupils shall be installed in the following proportions:

a. One (1) lavatory for each twenty-five (25) pupils or fraction thereof; and

b. If over fifty (50) pupils, two (2) lavatories plus one (1) additional lavatory for each additional fifty (50) pupils or fraction thereof; and ~~[over fifty (50).]~~

2. Twenty-four (24) inches of sink or eighteen (18) inches of circular basin, if provided with water outlet for each space, shall be considered equivalent to one (1) lavatory.

(3) One (1) service sink or slop sink shall be installed on each floor of a building.

(4) If detached modular classrooms are used, sanitary facilities shall not be required, if:

(a) The entrance of the modular classroom for elementary grades through the fifth grade is within a developed travel distance not to exceed 100 feet~~[- or]~~ from the accessible entrance to the main structure or an approved central modular restroom;

(b) The entrance of the modular classroom for sixth grade and above is within a developed travel distance not to exceed 200 feet, from the accessible entrance to the main structure or an approved central modular restroom;

(c) The travel path meets the accessibility requirements in the Kentucky Uniform Building Code; and

(d) There are sufficient fixtures in the main structure to serve the entire capacity of the school, including the modular classrooms.

(5) Water closets in a school building shall be of the elongated bowl type with a split open front seat.

Section 8. Schools of Higher Education and Similar Educational Facilities. (1)(a) Except as established in paragraph (b) of this subsection, in a school of higher education or a similar education facility, there shall be installed:

1. One (1) water closet for each fifty (50) males and~~or~~ one (1) water closet for each twenty-five (25) females or fraction thereof;

2. One (1) lavatory for each fifty (50) persons ~~[males or females]~~ or fraction thereof;

3. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof; and

4. One (1) urinal for each fifty (50) males or fraction thereof; and~~[-]~~

(b) One (1) water closet less than the number specified in paragraph (a) of this subsection may be provided for each urinal installed except that the number of water closets in those cases shall not be reduced to less than two-thirds (2/3) of the minimum specified.

(2) Water closets in a school of higher education or a similar education facility shall be of the elongated bowl type with a split open front seat.

Section 9. Public Garages and Service Stations. (1) Separate toilet rooms for males and females shall be provided with at least:

(a) A water closet and lavatory for females; and

(b) A water closet, lavatory, and urinal for males.

(2) Water closets shall be of the elongated bowl type with a split open front seat.

Section 10. Churches. (1) Sanitary facilities shall be provided in a church as follows:

(a) One (1) drinking fountain for each 400 persons or fraction thereof;

(b) One (1) water closet for each 150 females or fraction thereof;

(c) One (1) water closet for each 300 males or fraction thereof;

(d) One (1) urinal for fifty (50) to 150 males or fraction thereof;

(e) One (1) additional urinal for each additional 150 males or fraction thereof; and

(f) One (1) lavatory for each 150 persons or fraction thereof.

(2) Water closets in public restrooms shall be of the elongated bowl type with a split open front seat.

Section 11. Transient Lodging Facilities. A transient lodging facility shall be in compliance with the requirements established in 902 KAR 10:010 and this section.

(1) A hotel or motel with private rooms shall have one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(2) In the public and service areas, there shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof;

(b) One (1) water closet for each fifteen (15) females or fraction thereof;

(c) One (1) lavatory for each twenty-five (25) persons [males or females] or fraction thereof;

(d) One (1) urinal for eleven (11) to 100 males plus one (1) additional urinal for each additional fifty (50) males or fraction thereof;

(e) ~~One (1) bathtub or shower, if needed, for each ten (10) males or females or fraction thereof;~~

(f) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof on each floor; and

~~(g)~~ One (1) service sink or slop sink on each floor.

(3) In residential-type buildings, there shall be one (1) water closet, one (1) lavatory, and one (1) bathtub or shower for each ten (10) males and each ten (10) females or fraction thereof.

(4) In rooming houses with private baths, there shall be one (1) water closet, one (1) lavatory, and one (1) bathtub or shower per room.

(5) In rooming houses without private baths, there shall be:

(a) One (1) water closet for one (1) to ten (10) males and one (1) for each additional twenty-five (25) males or fraction thereof;

(b) One (1) water closet for one (1) to eight (8) females and one (1) for each additional twenty (20) females or fraction thereof;

(c) One (1) urinal for eleven (11) to 100 males and one (1) for each additional fifty (50) males or fraction thereof ~~[over 100]~~;

(d) One (1) lavatory for each ten (10) persons ~~[males or females]~~ or fraction thereof; and

(e) One (1) bathtub or shower for each ten (10) persons ~~[males or females]~~ or fraction thereof.

Section 12. Dormitories: School, Labor, or Institutional. ~~[In a dormitory, there shall be installed the fixtures required by this section.]~~

(1) Water closets. There shall be:

(a) One (1) water closet for up to ten (10) males plus one (1) additional water closet for each additional twenty-five (25) males or fraction thereof; and

(b) One (1) water closet for up to eight (8) females plus one (1) additional water closet for each additional twenty (20) females or fraction thereof.

(2) Urinals.

(a) There shall be:

1. One (1) urinal for each twenty-five (25) males or fraction thereof up to 150 males; and

2. ~~[and:]~~ If there are over 150 males, one (1) additional urinal for each additional fifty (50) males or fraction thereof.

~~(b) [If urinals are provided for women, the same number shall be provided for women as for men.]~~

~~(c)~~ If urinals are provided, a urinal may be substituted for a water closet, not to exceed one-third (1/3) of the required total number of water closets.

~~(d)~~ Trough urinals shall be figured on the basis of one (1) urinal for each twenty-four (24) inches of length.

(3) Lavatories. ~~[(a)]~~ There shall be one (1) lavatory for one (1) to twelve (12) persons, with an additional one (1) lavatory for each additional twenty (20) males and [each] fifteen (15) females or fraction thereof. ~~[(b) Separate dental lavatories shall be provided in community toilet rooms at a ratio of one (1) dental lavatory to each fifty (50) persons.]~~

(4) Additional fixtures. There shall be:

1. One (1) bathtub or shower for each eight (8) persons or fraction thereof, up to 150 persons; and

2. ~~[.]~~ If there are over 150 persons, there shall be one (1) additional bathtub or shower ~~[fixture]~~ for each twenty (20) persons~~].~~

~~For women's dormitories, there shall be installed additional bathtubs at the ratio of one (1) for each thirty (30) women];~~

(b) One (1) drinking fountain for each seventy-five (75) persons or fraction thereof;

(c) One (1) laundry tray or clothes washer for each fifty (50) persons or fraction thereof; and

(d) One (1) service sink or slop sink for each 100 persons or fraction thereof.

(5) If the dormitory is located in a youth camp, the requirements of 902 KAR 10:040 shall apply in addition to the requirements established in this section.

Section 13. Hospitals, Nursing Homes, and Institutions. A hospital, nursing home, or institution shall comply with the requirements established in 902 KAR 20:031, 20:046, 20:056, and 9:010~~], and this section~~. Sanitary facilities shall be provided on each floor level and shall conform to this section. ~~[the following:]~~

(1) Hospitals.

(a) Wards. There shall be:

1. One (1) water closet for each ten (10) patients or fraction thereof;

2. One (1) lavatory for each ten (10) patients or fraction thereof;

3. One (1) tub or shower for each fifteen (15) patients or fraction thereof; and

4. One (1) drinking fountain for each 100 patients or fraction thereof.

(b) Individual rooms. There shall be one (1) water closet, one (1) lavatory, and one (1) tub or shower.

(c) Waiting rooms. There shall be one (1) water closet and one (1) lavatory.

(2) Nursing homes and institutions (other than penal). There shall be:

(a) One (1) water closet for each twenty-five (25) males or fraction thereof;

(b) One (1) water closet for each twenty (20) females or fraction thereof;

(c) One (1) lavatory for each ten (10) persons or fraction thereof;

(d) One (1) urinal for each fifty (50) males or fraction thereof;

(e) One (1) tub or shower for each fifteen (15) persons or fraction thereof;

(f) One (1) drinking fountain on each floor; and

(g) One (1) service sink or slop sink on each floor.

(3) Institutions, penal.

(a) Cell. There shall be:

1. One (1) prison-type water closet; and

2. One (1) prison-type lavatory.

(b) Day rooms and dormitories.

1. There shall be:

a. One (1) water closet for each eight (8) female inmates or fraction thereof and one (1) water closet for each twelve (12) male inmates or fraction thereof;

b. One (1) lavatory for each twelve (12) inmates or fraction thereof;

c. One (1) shower for each fifteen (15) inmates or fraction thereof;

d. One (1) drinking fountain per floor; and

e. One (1) service sink or slop sink per floor.

2. For males, one (1) urinal may be substituted for each water closet if the number of water closets is not reduced to less than one-half (1/2) the number required.

(c) Toilet facilities for employees shall be located in separate rooms from those in which fixtures for the use of inmates or patients are located.

(d) There shall be one (1) drinking fountain on each floor.

(e) There shall be one (1) service sink or slop sink per floor.

Section 14. Workshops, Factories, Mercantile, and Office Buildings. Separate toilet facilities shall be provided for males and females on each floor unless otherwise denoted.

(1) Workshops and factories: Sanitary facilities shall conform to the following:

(a) There shall be:

1. One (1) water closet for each twenty-five (25) males or fraction thereof, up to 100;
2. One (1) lavatory for each twenty-five (25) males or fraction thereof, up to 100;
3. One (1) urinal for eleven (11) to fifty (50) employees;
4. Two (2) urinals for fifty-one (51) to 100 employees;
5. One (1) lavatory for each twenty-five (25) females or fraction thereof up to 100; **and**
6. One (1) water closet for each fifteen (15) females or fraction thereof up to 100;
- (b)[7.]** If in excess of 100 persons, there shall be:
 - 1.[a.]** One (1) additional water closet for each **additional** thirty (30) males and each **additional** thirty (30) females or fraction thereof;
 - 2.[b.]** One (1) additional lavatory for each additional fifty (50) males and females or fraction thereof; and
 - 3.[c.]** One (1) additional urinal for each **additional** 100 males or fraction thereof;
- (c) There shall be:**
 - 1.[8.]** One (1) shower for each fifteen (15) persons **or fraction thereof**, exposed to skin contamination from irritating, infectious, or poisonous materials;
 - 2.a.[9.]** One (1) drinking fountain on each floor for each fifty (50) employees **or fraction thereof, up to 100 employees; and**
 - b.[.]** If there are more than 100 employees, there shall be an additional drinking fountain on each floor for each additional seventy-five (75) **employees or fraction thereof** [persons]; and
 - 3.[40.]** One (1) service sink or slop sink per floor; **and[.]**
 - (d)1.[(b)]** Individual sinks or wash troughs may be used in lieu of lavatories.
 - 2.** Twenty-four (24) inches of sink or trough, if provided with water, or eighteen (18) inches of circular basin shall be deemed the equivalent of one (1) lavatory.
- (2) Mercantile.
 - (a) Employees.
 1. Except as provided in subparagraph 2 of this paragraph, sanitary facilities within each store shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.
 2. For a store containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or accessible areas having a travel distance of not more than 500 feet within the building in which the store is located.
 - (b) Customers.
 1. Sanitary facilities shall be provided for customers if the building contains 5,000 square feet or more.
 2. In a mall or shopping center, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed in individual stores or in a central toilet room area or areas, if:
 - a. The distance from the main entrance of a store does not exceed 500 feet; and
 - b. The toilet room area is accessible to physically disabled persons.
 - (c) Sanitary facilities shall be provided as stated in this section and there shall be:
 1. One (1) water closet for one (1) to 150 males;
 2. Two (2) water closets for 151 to 300 males;
 3. Three (3) water closets for **301[300]** to 450 males;
 4. **If over 500 males, three (3) water closets plus one (1) additional water closet for each additional 500 males or fraction thereof;** [~~Three (3) water closets plus one (1) water closet for each 500 males;~~]
 5. One (1) urinal for fifty (50) to 200 males;
 6. Two (2) urinals for 201 to 400 males;
 7. Three (3) urinals for 401 to 600 males;
 8. **If over 300 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof;** [~~Three (3) urinals plus one (1) urinal for each 300 males, or fraction thereof, over 600;~~]
 9. One (1) water closet for one (1) to 100 females;
 10. Two (2) water closets for 101 to 200 females;
 11. Three (3) water closets for 201 to 400 females;

12. **If over 400 females, three (3) water closets plus one (1) additional water closet for each additional 300 females or fraction thereof;** [~~Three (3) water closets plus one (1) water closet for each 300 females in excess of 400;~~]
 13. One (1) lavatory for one (1) to 200 persons;
 14. Two (2) lavatories for 201 to 400 persons;
 15. Three (3) lavatories for 401 to 700 persons;
 16. **If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof;** Three (3) lavatories plus one (1) lavatory for each 500 persons, or fraction thereof, in excess of 700;
 17. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and
 18. One (1) service sink or slop sink per floor.
- (3) Office buildings.
- (a) Employees.
1. Except as established in subparagraph 2 of this paragraph, sanitary facilities within office buildings shall be provided for employees. If more than five (5) persons are employed, separate facilities for each sex shall be provided.
 2. For an office building or space containing not more than 3,000 square feet of total gross floor area, employee facilities shall not be required if adequate interior facilities are provided within a centralized toilet room area or areas having a travel distance of not more than 500 feet within the same building.
- (b) Customers.
1. Sanitary facilities shall be provided for customers if the office building or space contains 5,000 square feet or more.
 2. In an office building, the required facilities, based on one (1) person per 100 square feet of total area, shall be installed within the individual offices, or in a central toilet room area or areas if:
 - a. The distance from the main entrance of an office space does not exceed 500 feet; and
 - b. The toilet room area is accessible to physically disabled persons.
 - (c) **Separate** sanitary facilities **for each gender** shall be provided as stated in this section.
 1. For males and females there shall be:
 - a. One (1) water closet for one (1) to fifteen (15) persons;
 - b. Two (2) water closets for sixteen (16) to thirty-five (35) persons;
 - c. Three (3) water closets for thirty-six (36) to fifty-five (55) persons;
 - d. Four (4) water closets for fifty-six (56) to eighty (80) persons;
 - e. Five (5) water closets for eighty-one (81) to 110 persons;
 - f. Six (6) water closets for 111 to 150 persons;
 - g. **If over 150 persons, six (6) water closets plus one (1) additional water closet for each additional forty (40) persons or fraction thereof;** [~~Six (6) water closets plus one (1) water closet for each forty (40) additional persons;~~]
 - h. One (1) lavatory for one (1) to fifteen (15) persons;
 - i. Two (2) lavatories for sixteen (16) to thirty-five (35) persons;
 - j. Three (3) lavatories for thirty-six (36) to sixty (60) persons;
 - k. Four (4) lavatories for sixty-one (61) to ninety (90) persons;
 - l. Five (5) lavatories for ninety-one (91) to 125 persons;
 - m. **If over 125 persons, five (5) lavatories plus one (1) additional lavatory for each additional seventy-five (75) persons or fraction thereof; and** [~~Five (5) lavatories plus one (1) lavatory for each forty-five (45) additional persons; and~~]
 - n. One (1) drinking fountain for each seventy-five (75) persons or fraction thereof.
 2. For males, if urinals are provided, one (1) water closet less than the number specified may be provided for each urinal installed if the number of water closets is not reduced to less than seventy (70) percent of the minimum specified.

Section 15. Swimming Pool Bathhouses. A swimming pool bathhouse shall comply with the requirements established in 902 KAR 10:120 and this section.

(1) Bathhouses for public swimming pools shall be divided into two (2) parts separated by a tight partition, with one (1) part designated for "Males" or "Men" and the other part designated for "Females" or "Women."

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(2) Sanitary facilities shall be provided in each bathhouse to serve the anticipated bather load, as defined in 902 KAR 10:120, and shall conform to the following:

(a) For swimming pools in which the total bather capacity is 200 persons or less, there shall be:

1. One (1) water closet for each seventy-five (75) males or fraction thereof;
2. One (1) water closet for each fifty (50) females or fraction thereof;
3. One (1) urinal for each seventy-five (75) males or fraction thereof;
4. One (1) lavatory for each 100 persons or fraction thereof;
5. One (1) shower per each fifty (50) persons or fraction thereof; and
6. One (1) drinking fountain per each 200 persons or fraction thereof;[.]

(b) For swimming pools in which the total bather capacity exceeds 200 persons, there shall be:

1. Five (5) water closets for 201 to 400 females, with one (1) additional water closet for each additional 250 females or fraction thereof;
2. Three (3) water closets for 201 to 400 males, with one (1) additional water closet for each additional 500 males or fraction thereof;
3. Three (3) urinals for 201 to 400 males, with one (1) additional urinal for each additional 500 males or fraction thereof;
4. One (1) lavatory for up to 150 persons [~~males or females~~];
5. Two (2) lavatories for 151 to 400 persons [~~males or females~~];
6. Three (3) lavatories for 401 to 750 persons [~~males or females~~];
7. If over 750 persons, three (3) lavatories plus one (1) additional lavatory for each additional 750 persons or fraction thereof; [~~If in excess of 750 males or females, three (3) lavatories plus one (1) additional lavatory for each additional 750 males or females over 750;~~]
8. One (1) shower per each fifty (50) persons or fraction thereof up to 150;
9. If over 150 persons, three (3) showers plus one (1) additional shower for each additional 500 persons or fraction thereof; and [~~If in excess of 150 persons, one (1) additional shower plus one (1) shower per each 500 persons over 650; and~~]
10. One (1) drinking fountain per each 500 persons or fraction thereof.

(3) Fixture schedules shall be increased for pools at schools or similar locations where bather loads may reach peaks due to schedules of use. Pools used by groups or classes on regular time schedules of:

- (a) One (1) hour or less shall have one (1) shower for each six (6) swimmers; and
 - (b) One (1) to two (2) hours shall have one (1) shower for each ten (10) swimmers.
- (4) Satisfactorily designed and located shower facilities, including warm water and soap, shall be provided for each sex. Showers shall be supplied with water at a temperature of not less than ninety (90) degrees Fahrenheit and at a flow rate of at least three (3) gallons per minute. Thermostatic, tempering, or mixing valves shall be installed to prevent scalding of the bathers.
- (5) The requirement relating to bathhouse toilet room and shower facilities may be waived if the facilities are [conveniently] available to pool patrons within 150 feet from the pool.

Section 16. Park Service Buildings or Bathhouses. A park service building or bathhouse shall comply with the requirements established in 902 KAR 15:020, Section 8, and this section.

(1) Except for a self-contained recreational vehicle community [~~park~~], each park shall provide one (1) or more central service buildings containing the necessary toilet and other plumbing fixtures specified in this section.

(2) Except for a self-contained recreational vehicle community [~~park~~], sanitary facilities shall be provided as follows:

(a) If there are one (1) to fifteen (15) vehicle spaces, there shall be for:

1. Males: One (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and
 2. Females: One (1) water closet, one (1) lavatory, and one (1) shower;
- (b) If there are sixteen (16) to thirty (30) vehicle spaces, there shall be for:
1. Males: One (1) water closet, one (1) urinal, two (2) lavatories, and two (2) showers; and
 2. Females: Two (2) water closets, two (2) lavatories, and two (2) showers;
- (c) If there are thirty-one (31) to forty-five (45) vehicle spaces, there shall be for:
1. Males: Two (2) water closets, one (1) urinal, three (3) lavatories, and three (3) showers; and
 2. Females: Two (2) water closets, three (3) lavatories, and three (3) showers;
- (d) If there are forty-six (46) to sixty (60) vehicle spaces, there shall be for:
1. Males: Two (2) water closets, two (2) urinals, three (3) lavatories, and three (3) showers; and
 2. Females: Three (3) water closets, three (3) lavatories, and three (3) showers;
- (e) If there are sixty-one (61) to eighty (80) vehicle spaces, there shall be for:
1. Males: Three (3) water closets, two (2) urinals, four (4) lavatories, and four (4) showers; and
 2. Females: Four (4) water closets, four (4) lavatories, and four (4) showers;
- (f) If there are eighty-one (81) to 100 vehicle spaces, there shall be for:
1. Males: Four (4) water closets, two (2) urinals, five (5) lavatories, and five (5) showers; and
 2. Females: Five (5) water closets, five (5) lavatories, and five (5) showers; and
- (g) If over 100 vehicle spaces are provided, there shall be provided:
1. One (1) additional water closet and one (1) additional lavatory for each sex per additional thirty (30) spaces or fraction thereof;
 2. One (1) additional shower for each sex per additional forty (40) vehicle spaces or fraction thereof; and
 3. One (1) additional urinal for males per additional 100 vehicle spaces or fraction thereof.

Section 17. Residential and Day Camp Sites. A residential or day camp site shall comply with the requirements established in 902 KAR 10:040 and this section.

(1)(a) Each residential camp site shall be provided with sanitary facilities for each sex as specified in this section.

- (b) A day camp shall:
1. Not be required to provide shower facilities; and
 2. Provide all other sanitary facilities for each sex as specified in this section.

(2) Sanitary facilities shall be provided as follows:

(a) If there are one (1) to eighteen (18) persons served, there shall be for:

1. Males: One (1) water closet, one (1) urinal, one (1) lavatory, and one (1) shower; and
2. Females: Two (2) water closets, one (1) lavatory, and one (1) shower;

(b) If there are nineteen (19) to thirty-three (33) persons served, there shall be for:

1. Males: Two (2) water closets, one (1) urinal, two (2) lavatories, and two (2) showers; and
2. Females: Two (2) water closets, two lavatories, and two showers;

(c) If there are thirty-four (34) to forty-eight (48) persons served, there shall be for:

1. Males: Two (2) water closets, two (2) urinals, two (2) lavatories, and three (3) showers; and
2. Females: Three (3) water closets, two (2) lavatories, and three (3) showers;

(d) If there are forty-nine (49) to sixty-three (63) persons served, there shall be for:

1. Males: Three (3) water closets, two (2) urinals, three (3) lavatories, and four (4) showers; and

2. Females: Four (4) water closets, three (3) lavatories, and four (4) showers;

(e) If there are sixty-four (64) to seventy-nine (79) persons served, there shall be for:

1. Males: Three (3) water closets, three (3) urinals, three (3) lavatories, and five (5) showers; and

2. Females: Five (5) water closets, three (3) lavatories, and five (5) showers;

(f) If there are eighty (80) to ninety-five (95) persons served, there shall be for:

1. Males: Four (4) water closets, three (3) urinals, four (4) lavatories, and six (6) showers; and

2. Females: Six (6) water closets, four (4) lavatories, and six (6) showers; and

(g) If over ninety-five (95) persons are served, there shall be provided:

1. One (1) additional water closet and one (1) additional lavatory for each twenty-five (25) persons or fraction thereof served;

2. One (1) additional shower for each twenty (20) persons or fraction thereof served; and

3. One (1) additional urinal per fifty (50) additional males or fraction thereof.

(3)(h) Coed day camps with equal number of males and females shall meet the fixture requirements of Section 6(2) of this administrative regulation, relating to elementary through secondary level school buildings.

(4)(3) Water closets may [shall] be substituted for urinals if facilities are to be used by both sexes.

Section 18. Retail Food Stores and Restaurants. Sanitary facilities shall be provided for employees. A retail food store or restaurant shall comply with the requirements established in 902 KAR 10:020, 45:005, and this section.

(1) Food stores.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities shall be provided for the employees.

(b)1. Separate sanitary facilities for each sex shall be provided for customers if the building contains 5,000 square feet or more.

2. In a mall or shopping center, the required facilities shall be:

a. [] Based on one (1) person per fifty (50) square feet; and

b. [] shall be Installed in individual stores or in a central toilet room area or areas, if the distance from the main entrance of a store does not exceed 500 feet.

(c) There shall be:

1. One (1) water closet for one (1) to 100 persons;

2. Two (2) water closets for 101 to 200 persons;

3. Three (3) water closets for 201 to 400 persons;

4. If over 400 persons, three (3) water closets plus one (1) additional water closet for each additional 500 males or 300 females or fraction thereof. [Three (3) water closets plus one (1) water closet for each 500 males or 300 females in excess of 400;]

5. One (1) urinal for eleven (11) to 200 males;

6. Two (2) urinals for 201 to 400 males;

7. Three (3) urinals for 401 to 600 males;

8. If over 600 males, three (3) urinals plus one (1) additional urinal for each additional 300 males or fraction thereof. [Three (3) urinals plus one (1) urinal for each 300 males or fraction thereof, over 600;]

9. One (1) lavatory for one (1) to 200 persons;

10. Two (2) lavatories for 201 to 400 persons;

11. Three (3) lavatories for 401 to 700 persons;

12. If over 700 persons, three (3) lavatories plus one (1) additional lavatory for each additional 500 persons or fraction thereof. [Three (3) lavatories plus one (1) lavatory for each 500 persons or fraction thereof in excess of 700;]

13. One (1) drinking fountain on each floor for each 500 persons or fraction thereof; and

14. One (1) service sink, utility sink, or curbed mop basin per floor as required by the Cabinet for Health and Family Services.

(2) Restaurants.

(a) If more than five (5) persons of different sex are employed, separate sanitary facilities for each sex shall be provided for the employees.

(b)1. Except as provided in subparagraph 3 of this paragraph, in a new establishment or an establishment that is extensively altered or changed from another type occupancy to a restaurant, toilet facilities for each sex shall be provided and readily accessible for the use of both patrons and employees.

2. Carryout-type food service operations shall be exempt from providing toilet facilities for the use of their patrons.

3. A restaurant with a business occupancy of one (1) to fifteen (15) persons shall:

a. Comply with the requirements in paragraphs (c) and (e) of this subsection; or

b. Provide one (1) unisex facility consisting of one (1) water closet and one (1) lavatory.

(c) There shall be:

1. [One (1) unisex restroom consisting of one (1) water closet and one (1) lavatory for one (1) to fifteen (15) persons;

2.] Two (2) water closets for one (1) to 100 persons;

2.[3.] Three (3) water closets for 101 to 200 persons;

3.[4.] Four (4) water closets for 201 to 300 persons; and

4. If over 300 persons, four (4) water closets plus one (1) additional water closet for each additional 200 persons or fraction thereof. [5.][4.] [Four (4) water closets plus one (1) water closet for each additional 200 persons or fraction thereof over 300.]

(d) There shall be:

1. One (1) urinal for fifty (50) [eleven (11)] to 200 males; and

2. If over 200 males, one (1) urinal plus one (1) additional urinal for each additional 150 males or fraction thereof. [One (1) additional urinal for each additional 150 males or fraction thereof over 150;]

(e) There shall be:

1. One (1) lavatory for one (1) to 200 persons;

2. Two (2) lavatories for 201 to 400 persons;

3. Three (3) lavatories for 401 to 600 persons; and

4. If over 600 persons, three (3) lavatories plus one (1) additional lavatory for each additional 200 persons or fraction thereof. [One (1) additional lavatory for each additional 200 persons or fraction thereof over 600;]

(f) There shall be:

1. One (1) drinking fountain for one (1) to 100 persons; and

2. If over 100 persons, two (2) drinking fountains plus one (1) additional water fountain for each additional 400 persons or fraction thereof. [Two (2) drinking fountains for 101 to 500 persons or fraction thereof.]

(g) If food is consumed indoors on the premises, water stations may be substituted for drinking fountains.

(h) There shall be one (1) service sink, utility sink, or curbed mop basin on each floor as required by the Cabinet for Health and Family Services.

(i) Lavatories for hand washing shall be provided in the kitchen area, readily accessible to the employees.

(3) Licensed food establishments. In all food establishments licensed by the Cabinet for Health and Family Services, Department for Public Health, the [following] requirements in this subsection shall be met.[]

(a) Hand-washing [Hand washing] sinks.

1. All hand-washing [hand washing] sinks shall have a minimum hot water temperature of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit.

2. Self-closing faucets shall provide a flow of water for no less than fifteen (15) seconds from activation.

3. Placement of hand-washing [hand washing] sinks shall be approved by the Cabinet for Health and Family Services, Department for Public Health pursuant to 902 KAR 45:005.

(b) A three (3) compartment sink for washing utensils shall be required which shall [may] drain by:

1. A direct connection with a minimum of a two (2) inch drain; or

2. An indirect connection to a three (3) inch trap with a minimum of an eight (8) inch by eight (8) inch open grated floor sink.

(c) Dishwashing or ware washing machines shall discharge indirectly through a three (3) inch open receptacle.

(d) Residential type dishwashing machines shall [may] discharge:

1. Through ~~[either]~~ an air gap device; or
2. Indirectly through a three (3) inch open receptacle.

(e) Food preparation sinks shall discharge by an indirect connection to a minimum three (3) inch trap.

(f) All hub drains, open receptacles, floor sinks, or other waste receptacles shall extend one (1) inch above the floor plane unless a full grate/strainer is installed flush with the floor.

(g) Occupied mobile food units located within an existing permitted food establishment shall:

1. ~~[Use only Kentucky Plumbing Code approved material;~~
2. ~~[Meet the requirements of the Kentucky Plumbing Code;~~

3. ~~[3.] Have a waste tank no less than fifty (50) percent larger than the freshwater tank;~~

3. ~~[4.] Have a National Sanitary Foundation (NSF) approved freshwater tank for potable water; and~~

4. ~~[5.] Have a minimum of a three (3) compartment sink and one (1) hand sink. [If the service or utility sink is placed in a location readily accessible to the employees as determined by the Cabinet for Health Services, it may substitute for the lavatory.]~~

RICHARD MOLONEY, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: February 15, 2010

FILED WITH LRC: February 15, 2010 at 9 a.m.

CONTACT PERSON: Dawn M. Bellis, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 144, fax (502) 573-1057.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings, and Construction
Division of Building Code Enforcement
(As Amended at ARRS, May 11, 2010)

815 KAR 25:080. Requirements for certified installer seals and certification of manufactured home installers.

RELATES TO: KRS 227.550, 227.560(1), 227.570, 227.580(1), (3), 227.590, 227.600(3), 227.630, 227.990, EO 2009-535

STATUTORY AUTHORITY: KRS 227.570(2), (4), 227.590(1), EO 2009-535 [2008-507]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.570(2) requires the office to enforce standards of installation, adopted by the Manufactured Home Certification and Licensure Board, as it determines are reasonably necessary to protect public health and safety. KRS 227.590(1) requires the board to promulgate administrative regulations to establish the standards. KRS 227.570(4) requires the board to promulgate administrative regulations to establish standards for the certified installer seal program. EO 2009-535, effective June 12, 2009, [2008-507, effective June 16, 2008,] reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings, and Construction, and established the commissioner, rather than executive director, as the head of the department. This administrative regulation establishes the requirements for certified installer seals and certification of manufactured home installers.

Section 1. Definitions. (1) "Board" is defined by KRS 227.550(1).

(2) "Certified installer" means an individual certified to install manufactured and mobile homes in Kentucky pursuant to this administrative regulation.

(3) "Certified installer seal" means a seal indicating that a manufactured or mobile home has been installed by a person properly certified as an [licensed as a certified] installer pursuant to this administrative regulation.

(4) "Installation" means the work performed on-site and the operations involved in the delivery, permanent securing, and placement of a manufactured home for the purpose of human occupancy~~[-to]~~:

- (a) Including[Include the following]:

1. Preparation of a permanent foundation;
2. Placement of polyvinyl covering on the ground, if applicable;
3. The placement and connection of utilities performed by appropriately-licensed contractors;
4. Anchoring and tying down; and
5. Installation of any other accessory or appurtenance specified in the sales contract; and

(b) Excluding[Exclude the following]:

1. Site preparation; or
 2. For a single-section home, ground set after site preparation.
- (5) "Permanent foundation" means a system of supports:
- (a) Capable of transferring without failure, into soil or bedrock, the maximum design load imposed by or upon the structure;
 - (b) Constructed of concrete; and
 - (c) Placed at a depth below grade adequate to prevent frost damage.

(6) "Site preparation" means work performed on the land in preparation for installation of the home:

(a) Including:

1. Clearing and initial grading;
2. Water drainage; and
3. Vegetation control; and

(b) Excluding final grading after the home has been set.

Section 2. Requirements for Certification. (1) An applicant for certified installer shall:

- (a) Submit to the department a completed Form MHCI 3, Certified Installer Application;
- (b) Pay an application fee of \$100 to the department;
- (c) Successfully complete fifteen (15) hours of an approved course of education;
- (d) Provide written proof of regularly assisting in site preparation and installation functions:

1. Under the supervision of a certified installer;
2. For at least sixty (60) days; and
3. On at least five (5) homes;

(e) Pass the certified installer examination given by the department; and

(f) Provide a certificate verifying current worker's compensation insurance coverage, if the applicant is employed at the time of application.

(2) An installer certification shall be issued in the name of the individual qualified under subsection (1) of this section. The individual may request that the certificate also bear the name of the employing company.

(3)(a) If the certified installer changes his business name or is no longer associated with the company whose name appears upon the certificate, the certified installer shall inform the department[office] and request an amended certificate reflecting [that shall reflect] the current status.

(b) If the certified installer is no longer associated with a company, that company shall not hold itself out as a certified installer or as having [have] in its employ a certified installer until another certified person has become associated with that company.

Section 3. Renewal of Certification; Continuing Education. (1)(a) The installer certificate shall expire on the last day of the installer's birth month.

(b) If an initial certificate is for a period of less than twelve (12) months, the fee shall be reduced on a pro rata monthly basis.

(2) A certified installer seeking to renew certification shall:

- (a) Submit a completed application, Form DHBCM 40-21, Certified Installer Renewal Application, to the department;
- (b) Pay a renewal fee of fifty (50) dollars; and
- (c) Provide proof of at least five (5) classroom hours successfully completed during the twelve (12) months preceding renewal [year] in a course offered by the Kentucky Manufactured Housing Institute.

Section 4. Minimum Requirements for Installations. A certified installer shall comply with KRS 227.570(3) by using the manufacturer's instructions or ANSI A225.1, Manufactured Home Installations.

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Section 5. Certified Installer Seal. (1) A certified installer who installs a manufactured or mobile home in accordance with ~~the standards established in~~ this administrative regulation shall place a certified installer seal on the home.

(a) Certified installer seals shall be obtained from the department.

(b) The application shall be:

1. Filed on Form DHBC ~~MH~~ **MHCI** 40-29, Application for Certified Installer Seals; and

2. Accompanied by a fee of twenty-five (25) dollars for each seal.

(2) Recordkeeping. A certified installer shall:

(a) Maintain the following information, which shall be reported monthly to the Division of Building Code Enforcement, Manufactured Housing Section, by regular U.S. Mail, facsimile, or electronically, on Form DHBC MH 40-30, Monthly Certified Installer Certification, for each certified installation:

1. Unit serial number;

2. Certified installer seal number;

3. Date manufactured, if known;

4. Make of unit;

5. Installation date of unit; and

6. Name of consumer and address where the manufactured home is located; ~~and~~

(b) Retain the completed Form DHBC MH 40-30, Monthly Certified Installer Certification, for three (3) years; and

(c) Make a copy of the form available to a manufactured housing field inspector upon request.

(3) Application and placement of certified installer seals.

(a) Each certified installer seal consists of two (2) parts that shall be affixed as follows:

1. One (1) part shall be placed two (2) inches above the HUD label on the outside left corner of a manufactured home or on the outside left corner of a mobile home if a HUD label is not required; and

2. One (1) part shall be placed on the inside of the electrical panel in the manufactured home.

(b) Other seals, stamps, covers, or other markings shall not be placed within two (2) inches of the certified installer seal.

(4) Lost or damaged seals.

(a) If a certified installer seal becomes lost or damaged, the owner shall notify the department immediately, in writing, specifying:

1. The manufacturer;

2. The manufactured or mobile home serial number; and

3. The certified installer seal number, if known.

(b) A damaged seal shall be:

1. Promptly returned to the department; and

2. Replaced by the department for a fee of twenty-five (25) dollars.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ANSI A225.1, Manufactured Home Installations", 1994 Edition;

(b) "Form MHCI 3, Certified Installer Application", September 2007;

(c) "Form DHBC MH 40-29, Application For Certified Installer Seals", December 2008;

(d) "Form DHBC MH 40-21, Certified Installer Renewal Application", February 2009; and

(e) "Form DHBC MH 40-30, Monthly Certified Installer Certification", December 2008.

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

KREIL MORAN, Chairman

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 13, 2010

FILED WITH LRC: March 15, 2010 at 9 a.m.

CONTACT PERSON: Michael D. Bennett, Staff Attorney, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394 ext. 126, fax (502) 573-1057.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amended After Comments)

301 KAR 2:132. Elk depredation permits, landowner cooperator permits, and quota hunts.

RELATES TO: KRS 150.010, 150.180, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.170(4), 150.177, 150.178, 150.390(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons, regulate bag and possession limits, and determine the methods and devices used to take wildlife. KRS 150.170(4) exempts landowners, their dependents, and their resident tenants from license requirements. KRS 150.177 authorizes the department to issue special commission permits for game species to nonprofit wildlife conservation organizations. KRS 150.178 authorizes the department to issue cooperator[elk] permits to landowners who enroll property for public hunting access. 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 requirements for the elk permit drawing and quota hunts, the conditions under which special commission and landowner cooperator permits can be used, procedures for elk damage abatement, and any postseason hunt ~~[to be]~~ held after the quota hunts.

Section 1. Definitions. (1) "Antlered elk" means an elk having one (1) antler 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 which also counts as one (1) point.

(2) "Antlerless elk" means an elk without visible polished antler protruding above the hairline.

(3) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that may lure, entice, or attract wildlife.

(4) "Baiting" means to place, deposit, tend, distribute, or scatter bait.

(5) "Electronic decoy" means a motorized decoy powered by electricity, regardless of source.

~~(6) [(4)]~~ "Elk" means *Cervus elaphus nelsoni*.

~~(7) [(5)]~~ "Elk Hunting Unit" or "EHU" means a designated area in the restoration zone with specific management restrictions.

~~(8) [within the elk restoration zone possessing specific elk management restrictions.~~

~~(6)~~ "Elk Management Unit" or "EMU" means a designated area in the restoration zone with specific management restrictions for a postseason antlerless elk quota[quote] hunt.

~~(9) [within the elk restoration zone, possessing specific elk management restrictions during a postseason antlerless quota hunt.~~

~~(7)~~ "Landowner cooperator" means a landowner or lessee who owns or leases at least 5,000 acres of land in the restoration zone and enters an agreement with the department to allow public access and hunting for five (5) years.

~~(10) [(8)]~~ "Out-of-zone" means all counties not included in the restoration area.

~~(11) [(9)]~~ "Restoration zone" means the following Kentucky counties: Bell, Breathitt, Clay, Floyd, Harlan, Johnson, Knott, Knox, Leslie, Letcher, Magoffin, Martin, McCreary, Perry, Pike, and Whitley.

~~(12) [(10)]~~ "Youth" means a person under the age of sixteen (16) by the first date of the hunt.

Section 2. Elk Damage Control. The department may authorize the removal or destruction of elk that are causing property damage. A person authorized to destroy an elk shall ~~[not]~~:

(a) Attach a department-issued disposal permit to an elk prior to moving[Move the elk until a disposal permit provided by the

~~department has been attached to]~~ the carcass; and

(b) Not remove the disposal permit until the carcass is processed.

Section 3. Regular Elk Quota Hunts. (1) The elk quota hunt lottery [hunt] application period shall be December 1 to April 30.

(2) A person shall apply for the elk quota hunt via the department's Web site and provide[- The applicant shall provide the following:]

(a) The applicant's name;

(b) Social Security number;

(c) Date of birth;

(d) A mailing address or phone number; and

~~(e) [- Social Security number, date of birth, and mailing address or phone number; and~~

~~(b)] A nonrefundable application fee of ten (10) dollars.~~

(3) ~~[An applicant shall not apply more than once per application period.~~

(4) The commissioner may 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.

~~(4) [(5)]~~ There shall be a random electronic drawing.

~~(5) [(6)]~~ Five (5) either-sex elk permits shall be available for a special youth-only [elk] quota hunt to be held for three (3) consecutive days on Paul Van Booven WMA and adjacent private lands as allowed by the landowner, beginning the last Saturday in September.

(a) There shall be a separate random electronic drawing for the youth-only elk quota hunt.

(b) The application period for the youth-only elk quota hunt shall be December 1 through April 30.

(c) A youth shall apply via the department's Web site and provide ~~[the following]~~:

1. The applicant's name:[Name:]

2. Social Security number;

3. Date of birth;

4. Mailing address;

5. Phone number; and

6. A nonrefundable application fee of ten (10) dollars.

(d) An applicant shall not apply for the youth-only elk quota hunt more than once per application period.

(e) An applicant for the youth-only elk quota hunt may also apply for the regular quota hunt as established in Section 3[also may apply for the regular quota hunt as set forth in Section (3)] of this administrative regulation. A youth applicant drawn for the youth-only elk quota hunt shall not be drawn in the regular quota hunt lottery held during the same calendar year.

(f) A youth drawn for the youth-only elk quota hunt shall be ineligible to be drawn for the youth-only elk quota hunt in subsequent years.

~~(6) [(7)]~~ No more than ten (10) percent of all drawn applicants shall be nonresidents.

~~(7) [(8)]~~ A quota hunt permit awarded via a department-administered lottery drawing shall not be transferable.

(8) Beginning December 1, 2011, there shall be four (4) separate regular elk quota hunt lotteries consisting of:

(a) Antlered archery;

(b) Antlered firearms;

(c) Antlerless archery; and

(d) Antlerless firearms.

(9) Applicants shall enter each lottery separately.

~~(a) A person shall only apply once for an individual lottery, but may enter up to two (2) of the four (4) lotteries, but shall be ineligible to be drawn in more than one (1) lottery;~~

~~(b) The nonrefundable application fee for each lottery entry shall be ten (10) dollars; and~~

~~(c) Applicants shall be selected for a quota hunt by random electronic drawing.~~

(10) A person who is drawn for an antlered elk quota hunt shall

be ineligible to be drawn for any antlered elk quota hunt for the following three (3) years.

Section 4. Landowner Cooperator Permits. (1) With the approval of the commission, the commissioner may issue to a landowner cooperator one (1) either-sex elk permit or two (2) antlerless-only permits per each 5,000 acres for each year of the agreement.

(2) A recipient of a landowner cooperator permit shall comply with the season, bag limit, and hunter requirements in Sections 5 and 6 of this administrative regulation.

(3) A landowner cooperator permit is transferable, but shall only be used [only] on the land for which the agreement was made.

(a) The permit may be transferred to any person eligible to hunt in Kentucky.

(b) Prior to hunting, the landowner cooperator or person who has received the transferred permit shall provide [the following information] to the department:

1. The hunter's name;
2. Social Security number;
3. Address; and
4. Telephone number.

(c) The permit shall not be transferable after being used for the harvest of one (1) elk.

(4) Public access agreements with the department shall be recorded in writing.

Section 5. Hunter Requirements. (1) The statewide bag limit shall be one (1) elk per hunter per license year.

(2) A drawn applicant or a person who legally receives a landowner cooperator permit or a special commission permit [issued] pursuant to 301 KAR 3:100 may be accompanied by up to two (2) other individuals.

(3) A person drawn for a regular quota hunt~~[drawn applicant]~~ shall be assigned to a single EHU and shall not hunt outside that EHU, except that a drawn applicant who owns land in the elk restoration zone may hunt on his or her land.

(4) An elk hunter or any person accompanying an elk hunter shall comply with hunter orange requirements established in 301 KAR 2:172.

(5) An elk hunter shall not:

(a) Take elk except during daylight hours;

(b) Use dogs, except to recover wounded elk using leashed tracking dogs~~[for leashed tracking dogs to recover wounded elk];~~

(c) Hunt over bait [as defined in 301 KAR 3:010];

(d) Drive elk from outside the assigned EHU;

(e) Take an elk while it is swimming;

(f) Use electronic calls or electronic decoys; or

(g) Take an elk if the hunter is in a vehicle, boat, or on horseback, except that~~[:] a disabled hunter who has a hunting method exemption permit issued by the department may use a stationary vehicle as a hunting platform.~~

(6) A person shall:

(a) Obtain a vehicle tag from the department prior to hunting elk in the restoration zone; and

(b) Display the vehicle tag in the windshield of the vehicle while hunting elk.~~[An elk hunter hunting in the restoration zone shall display a vehicle tag issued by the department in the windshield of his or her vehicle at all times while hunting elk.]~~

(7) 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 person's firearm.

(8) An adult accompanying a person under (16) years old shall not be required to possess a hunting license or elk permit if the adult is not hunting.

(9) A hunter may use any deer hunting method authorized by~~[firearm, archery equipment, or crossbow legal for hunting deer pursuant to]~~ 301 KAR 2:172.

(10) Except as authorized by KRS 237.110, a person shall not carry any of the following items while hunting elk:

(a) Any weapon or device prohibited for deer hunting pursuant to 301 KAR 2:172;

(b) A modern firearm [of] less than .270 caliber;

(c) A muzzle-loading firearm [of] less than .50 caliber;

(d) A shotgun [of] less than 20 gauge;

(e) Any arrow without a broadhead point;

(f) A handgun with a barrel length of less than six (6) inches, a bore diameter less than .270~~[0.270]~~ inches (.270 caliber), and when fired, the bullet shall produce at least 550 ft/lbs of energy at 100 yards.

(11) Except as authorized by KRS 237.110, a person shall not carry a firearm during the archery-only season as set forth in Section 6 of this administrative regulation.

(12) A person, including one who carries~~[those who carry]~~ a concealed weapon authorized by KRS 237.110, shall not:

(a) Use any of the items listed in Section 5(10) to take elk; and

(b) Use any firearm to take elk during the archery-only season as set forth in Section 6 of this administrative regulation.

(13) A quota elk hunter shall only take an elk of the type and sex determined by the permit drawn.

(14) An individual who receives or is transferred a landowner cooperator permit or a special commission permit may hunt in all of~~[either]~~ the antlered-only or antlerless-only quota hunts in accordance with the seasons and limits in Section 6 of this administrative regulation.

Section 6. Elk Quota Hunt Seasons and Limits. (1) For the 2010-2011 season, a person who is legally participating in a quota hunt~~[A hunter]~~ may use archery equipment for antlered and antlerless elk beginning the third Saturday in October through the third Monday in January.

(2) For the 2010-2011 season, a person who is legally participating in a quota hunt~~[A hunter]~~ may use a crossbow for antlered or antlerless elk:

(a) For two (2) consecutive days beginning the third Saturday in October; and

(b) From the second Saturday in November through December 31.

(3) For the 2010-2011 season, a person legally participating in a quota hunt~~[A hunter]~~ may use archery equipment, a modern firearm, a muzzleloader, or a crossbow:

(a) For antlered elk during one (1) of two (2) seven (7) consecutive day periods as randomly assigned by the department.

1. The first seven (7) day period shall begin the first Saturday in October; and~~[:]~~

2. The second seven (7) day period shall begin the second Saturday in October; and~~[:]~~ 3. The hunter shall be assigned during the regular draw.]

(b) For antlerless elk during one (1) of two (2) seven (7) consecutive-day periods as randomly assigned by the department.

1. The first seven (7) day period shall begin the second Saturday in December; and

2. The second seven (7) day period shall begin the third Saturday in December.

~~[(4) Beginning with the 2011-2012 season, a hunter drawn for an archery antlered or antlerless permit may use archery equipment beginning the third Saturday in September through the third Monday in January, except when a firearms elk season is open.]~~

~~[(5) Beginning with the 2011-2012 season, a hunter drawn for an archery antlered or antlerless permit may use a crossbow beginning the fourth Saturday in September through the third Monday in January, except when a firearms elk season is open.]~~

~~[(6) Beginning with the 2011-2012 season, a hunter drawn for a firearms antlered permit may use a firearm during one (1) of two (2) seven (7) consecutive day periods as randomly assigned by the department.]~~

~~1. The first seven (7) day period shall begin the first Saturday in October; and~~

~~2. The second seven (7) day period shall begin the second Saturday in October.]~~

~~[(7) Beginning with the 2011-2012 season, a hunter drawn for a firearms antlerless permit may use a firearm during one (1) of two (2) seven (7) consecutive day periods as randomly assigned by the department.]~~

~~1. The first seven (7) day period shall begin the second Saturday in December; and~~

~~2. The second seven (7) day period shall begin the third Satur-~~

~~day in December.]~~[For antlerless elk;

1. For ten (10) consecutive days, beginning the second Saturday in November, and;
2. For fourteen (14) consecutive days beginning the second Saturday in December.]

Section 7. EHU boundaries. ~~[EHU's shall be designated as follows:]~~(1) EHU 1 - Starting at the Martin/Lawrence County line at the Tug Fork of the Big Sandy River, the boundary proceeds southeast following the Tug Fork to the Pike County/Buchanan County, Virginia line. The boundary then proceeds southwest following the Kentucky/Virginia state line to U.S. Hwy 23. The boundary proceeds north following U.S. Hwy 23 to the Johnson/Lawrence County line. The boundary proceeds east following the county line of Johnson/Lawrence and Martin/Lawrence, completing the boundary.

(2) EHU 2 - Starting at the Johnson/Lawrence County line on U.S. Hwy 23, the boundary proceeds south to the intersection of U.S. Hwy 23 with State Hwy 80. The boundary then follows State Hwy 80 west to the intersection with State Hwy 15. The boundary then goes north following State Hwy 15 to the intersection of State Hwy 15 with the Breathitt/Wolfe County line. The boundary then follows the county lines of Magoffin/Wolfe County, Magoffin/Morgan County, and Johnson/Morgan County northeast to U.S. Hwy 23, completing the boundary.

(3) EHU 3A - Starting at the intersection of U.S. Hwy 23 and State Hwy 80, the boundary proceeds south following U.S. Hwy 23 to the intersection of U.S. Hwy 23 with the Kentucky/Virginia state line. The boundary then follows U.S. Hwy 119 west to the intersection of U.S. Hwy 119 with State Hwy 15. The boundary then follows State Hwy 15 northwest to the intersection of State Hwy 15 with State Hwy 80. The boundary then follows State Hwy 80 northeast to the intersection of State Hwy 80 and U.S. Hwy 23, completing the boundary.

(4) EHU 3B - Starting at the intersection of State Hwy 550 and 1697, go north on Hwy 550 through Mousie and Betty to the intersection with Hwy 7 near Lackey. Turn south on Hwy 7, travel past Dema to intersection with Hwy 899. Turn south on Hwy 899, go through Pippa Passes to intersection with Hwy 1697 at Alice Lloyd College. Go west on Hwy 1697 to intersection with Hwy 550 in Garner, completing the boundary.

(5) EHU 4 - Starting at the Breathitt/Wolfe County line on State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway west to the Clay/Laurel County line. The boundary then follows the county lines of Clay/Jackson County, Clay/Owsley County, Perry/Owsley County, Breathitt/Owsley County, Breathitt/Lee County, and Breathitt/Wolfe County northeast to State Hwy 15 at the Breathitt/Wolfe County line, completing the boundary.

(6)[(6)] EHU 5 - Starting at the intersection of the Hal Rogers Parkway and State Hwy 15, the boundary proceeds south following State Hwy 15 to the intersection of State Hwy 15 and U.S. Hwy 119. The boundary then follows U.S. Hwy 119 east to the intersection of U.S. Hwy 119 and U.S. Hwy 23. The boundary then follows U.S. Hwy 23 south to the intersection of U.S. Hwy 23 with the Kentucky/Virginia line. The boundary then follows the Kentucky/Virginia state line southwest to the intersection of the state line with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 north to the intersection of U.S. Hwy 421 and State Hwy 66, then north along State Hwy 66 to the intersection of State Hwy 66 and Hal Rogers Parkway. The boundary then follows Hal Rogers Parkway northeast to the intersection of Hal Rogers Parkway and State Hwy 15, completing the boundary.

(7)[(6)] EHU 6A - Starting at the intersection of the Hal Rogers Parkway and State Hwy 66, the boundary proceeds south following State Hwy 66 to the intersection of State Hwy 66 with State Hwy 221 at Straight Creek. The boundary proceeds east on State Hwy 221 to the intersection with U.S. Hwy 421. The boundary then proceeds south on U.S. Hwy 421 to the intersection with the Kentucky/Virginia state line. The boundary then follows the state line west to the Kentucky/Tennessee state line and continues west to the intersection of the Wayne/McCreary County line with the Kentucky/Tennessee state line. The boundary then follows the county

lines of McCreary/Wayne County, McCreary/Pulaski County, McCreary/Laurel County, Whitley/Laurel County, Knox/Laurel County, and Clay/Laurel County northeast to the intersection of Hal Rogers Parkway and the Clay/Laurel County Line. The boundary then follows Hal Rogers Parkway east to the intersection of Hal Rogers Parkway and State Hwy 66, completing the boundary.

(8)[(7)] EHU 6B - Starting at the intersection of State Hwy 66 and the Hal Rogers Parkway at Big Creek, the boundary proceeds south on State Hwy 66 to the intersection with U.S. Hwy 421. The boundary then follows U.S. Hwy 421 south to the intersection with Kentucky 2058 near Helton, then follows Kentucky 2058 west to Kentucky 1780 at Spruce Pine. The boundary proceeds north on Kentucky 1780 to the intersection with Kentucky 1850 at Warbranch, then west along Kentucky 1850 to the intersection with State Hwy 66 near Queendale. The boundary then follows State Hwy 66 north to the intersection with Hal Rogers Parkway at Big Creek, completing the boundary.

(9)[(8)] EHU 6C - Starting at the intersection of U.S. Hwy 421 and Kentucky 2058 near Helton, the boundary proceeds south on U.S. Hwy 421 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 1780 and turns north to follow Kentucky 1780 to the intersection with Kentucky 2058 at Spruce Pine. It then follows Kentucky 2058 east to the intersection with U.S. Hwy 421, completing the boundary.

(10)[(9)] EHU 6D - Starting at the intersection of Kentucky 1780 and Kentucky 1850 at Warbranch, the boundary proceeds south on Kentucky 1780 to the intersection with State Hwy 221. The boundary then follows State Hwy 221 west to the intersection with Kentucky 2011, turning north along Kentucky 2011 to the intersection of Kentucky 2011 and State Hwy 66. It then follows State Hwy 66 north to Kentucky 1850, then proceeds east on Kentucky 1850 to the intersection with Kentucky 1780, completing the boundary.

(11)[(40)] EHU 6E - Starting at the intersection of State Hwy 66 and Kentucky 2011 near Beverly, the boundary proceeds south along Kentucky 2011 to the intersection with State Hwy 221 at Stoney Fork. The boundary then follows State Hwy 221 west to the intersection with State Hwy 66 at Straight Creek, turning north along State Hwy 66 to the intersection with Kentucky 2011, completing the boundary.

Section 8. ~~Post-season~~[Postseason] Quota Hunt for Antlerless Elk on Private Land. (1) A modern firearms quota hunt for antlerless elk and elk having less than four (4) points on both sides shall take place beginning on the fourth [4th] Saturday in January for fourteen (14) consecutive days.

(2) Each hunter shall be randomly drawn from the pool of applicants:

- (a) Who were not drawn for the previous elk quota hunts; and
- (b) Who are residents of the elk restoration zone.

(3) A drawn applicant shall comply with the requirements in Section 5 of this administrative regulation except that an applicant may hunt only in the assigned EMU or on land the applicant owns within another EMU.

(4) EMU boundaries shall be [designated as follows]:

(a) Knott County EMU - Starting at the intersection of State Hwy 550 and State Hwy 7 near Lackey, the boundary proceeds south along State Hwy 7 to the intersection with State Hwy 582 then southeast on State Hwy 582 to the intersection of State Hwy 582 and 160. The boundary then proceeds north on State Hwy 160 to the intersection with State Hwy 550 at Hindman, turning northeast on State Hwy 550 to the intersection with State Hwy 7, thus completing the boundary.

(b) Stoney Fork EMU - Starting at the intersection of State Hwy 2058 and U.S. Hwy 421 near Helton, the boundary then proceeds south along U.S. Hwy 421 to the intersection of U.S. Hwy 421 and U.S. Hwy 119 near Harlan, then west along U.S. Hwy 119 to the intersection of U.S. Hwy 119 and U.S. Hwy 25E. The boundary then goes north following U.S. Hwy 25E to the intersection with State Hwy 66, then north on State Hwy 66 to the intersection of State Hwys 66 and 1850, then east along State Hwy 1850 to the intersection of State Hwys 1850 and 1780 at Warbranch. The boundary then proceeds south on State Hwy 1780 to its intersec-

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tion with State Hwy 2058 near Spruce Pine, then east on State Hwy 2058 back to U.S. Hwy 421 at Helton, thus completing the boundary.

(5) Any public hunting area within an EMU shall be closed to elk hunting during this season.

Section 9. Tagging and Checking Requirements. Immediately after taking an elk and prior to removing the hide or head from the carcass, a hunter shall:

(1) Record on a hunter's log the following information:

- (a) The species harvested;
- (b) The sex of the animal;
- (c) Date of harvest; and
- (d) County of harvest; and[-]

(2) Check the harvested elk by calling (800) 245-4263 and recording the confirmation number on a hunter's log[- and

(3) ~~If hunting in the elk zone during the elk quota hunts, attach a department-issued tag to the carcass before moving it].~~

Section 10. Elk Hunting on Public Land. (1) A person drawn for an elk quota hunt or the recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests, the ~~drawn applicant or recipient of a special commission permit may hunt on Wildlife Management Areas (WMA), state forests,]~~ Big South Fork National River and Recreation Area, the Daniel Boone National Forest, and the Jefferson National Forest within the restoration zone under the conditions of the permit received.

(2) Portions of Paintsville Lake WMA that lie out of the restoration zone~~lie outside the restoration zone and]~~ are subject to the requirements established in Section 11 of this administrative regulation.

(3) Elk hunting shall not be allowed on public areas during quota deer hunts listed in 301 KAR 2:178.

(4) Paul Van Booven WMA.

(a) The archery and crossbow seasons shall be open as established~~set forth~~ in Section 6 of this administrative regulation.

(b) Firearms shall not be used to hunt elk, except that youths participating in the youth-only elk quota hunt may use any legal weapon to take elk.

(c) The WMA shall be closed to all other hunting during the youth-only elk quota hunt.

Section 11. Out-of-zone Elk Hunting. (1) The methods for taking deer and the deer seasons established in 301 KAR 2:172 shall apply to a person~~of taking and seasons established in 301 KAR 2:172 shall apply to]~~ taking elk outside of the restoration zone.

(a) A person taking an out-of-zone elk~~[In order to harvest an out-of-zone elk, a hunter shall be a legal deer hunter and]~~ shall possess an out-of-zone elk permit.

(b) A landowner shall be exempt from this permit requirement pursuant to KRS 150.170(4).

(2) Either sex elk may be taken and shall not count toward a person's~~towards the]~~ deer bag limit.

(3) Any elk harvested out-of-zone shall be telechecked pursuant to~~[Elk harvested out-of-zone shall be telechecked in accordance with]~~ Section 9 of this administrative regulation.

Section 12. A person who takes possession of any elk antler that has the skull or skull plate attached to it shall contact the department's Law Enforcement Division within twenty-four (24) hours to obtain a disposal permit.

BENJY KINMAN, Deputy Commissioner

For JONATHAN GASSETT, Commissioner

MARCHETA SPARROW, Secretary

APPROVED BY AGENCY: March 5, 2010

FILED WITH LRC: March 12, 2010 at 2 p.m.

CONTACT PERSON: Rose Mack, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 4507, fax (502) 564-9136.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes elk hunting requirements and legal methods to handle elk depredation problems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the boundaries of the units to which hunters are assigned, to establish hunting procedures, and to effectively manage elk in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.170(4) exempts landowners, the dependents, and their tenants from license requirements. KRS 150.177 and 150.178 authorize the issuance of commission permits and landowner cooperator permits. KRS 150.390 authorizes the department to promulgate administrative regulations for the removal of elk that are causing destruction to property and to establish elk hunting seasons and requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The elk population continues to increase and requires additional harvest as the statute provides. This regulation establishes seasons and requirements for elk hunting.

(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 subdivides Elk Hunting Unit 3 (EHU) into 2 subunits to better distribute hunting pressure on Consol WMA, removes the November firearms elk season, assigns cow hunters to 1 of 2 firearms weeks, eliminates the metal tag requirement for in-zone hunters, removes the deer permit requirement for out-of-zone hunters, allows landowner cooperators to opt for 2 antlerless tags in lieu of 1 antlered tag, creates 4 types of regular quota hunts for the 2011-2012 elk season, blocks those drawn for a bull tag from entering the lottery for 3 years, blocks those drawn for the special youth hunt from applying for that hunt again.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

(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: There are approximately 35,000 to 50,000 people who apply to hunt elk in Kentucky each year. People who own or lease land over 5,000 acres can enter into an agreement with the Department for public hunting access and receive elk tags. Property owners sustaining damage from elk can benefit from the late season depredation hunt. Residents of the elk zone who applied for the regular season hunt shall be eligible for the late season depredation hunt.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A person who is less than sixteen (16) years old by the day of the hunt may apply for youth permits. Hunters may apply for 2 elk lotteries with their choice of weapon and gender.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in 3 for the 2010-2011 elk season. For the 2011-2012 season, hunters may apply for 2 lotteries per season, at the cost of \$10 per application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters may apply for up to 2 of the 4 lotteries.

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

(a) Initially: Other than a minor administrative cost, there will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund. The department already has the mechanisms in place for administering quota hunt application procedures, random drawings and other aspects of the elk hunts.

(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: Additional fees for direct implementation of this regulation are not necessary, as infrastructure for conducting all aspects of elk management and quota hunts already exists (see "6" above).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation amendment does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. Residents of the elk restoration zone who are not drawn for the regular quota hunt shall be eligible for a late season depredation hunt. The purpose of this hunt is to allow residents to assist landowners in removing elk causing property damage in 2 (two) areas with chronic nuisance elk problems. Fewer than 50 tags for antlerless and spike bulls will be drawn. These tags can only be used on private land within one of the 2 (ten) Elk Management Units (EMU). The number of tags to be issued will be determined by the level of nuisance elk cases or property damage caused by elk documented within the EMU's prior to January each year.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025, 150.170, 150.177, 150.178, and 150.390.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? For the 2009 elk season, 46,009 people paid the 10 (ten) dollars lottery application fee (\$460,090 of revenue to the department). A total of 926 of the 1,000 drawn hunters paid for elk permits, generating \$53,575 in additional revenue to the department. Total revenue directly generated by the elk hunts for the department was \$513,665.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Each year has brought increases in the number of applicants and thus the direct revenue to KDFWR. There is also a positive economic impact to cities, counties and local businesses in and near the elk restoration zone, but the specific dollar amount is unknown.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): See 4 (a) and (b) above.

Expenditures (+/-): No additional expenditures; see 4 (c) and (d) above.

Other Explanation:

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 5:075. Cabinet review procedures for KPDES permits.

RELATES TO: KRS 224.01-010, 224.01-070, 224.01-400, 224.10-420, 224.10-440, 224.10-470, 224.70-100, 224.70-120, 224.99-010, 40 C.F.R. 124, 33 U.S.C. 1251-1387[et seq.]

STATUTORY AUTHORITY: KRS 224.10-100(19), 224.16-050, 224.70-110, 33 U.S.C. 1251-1387[et seq., 1342]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19) authorizes the [Environmental and Public Protection] cabinet to issue, continue in effect, revoke, modify, suspend or deny [under such conditions as the cabinet may prescribe,] permits to discharge into any waters of the Commonwealth. KRS 224.16-050(1) authorizes[establishes that] the cabinet to[may] issue federal permits pursuant to 33 U.S.C.[Section] 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387[(33 U.S.C. Section 1251 et seq.)] subject to the conditions imposed in 33 U.S.C.[Section] 1342(b) and (d). This administrative regulation establishes[sets forth] the procedures for[through which the cabinet will follow in] receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits.

Section 1. Review of the Application. An application for a KPDES permit shall be submitted and reviewed as established in 40 C.F.R. 124.3, effective July 1, 2009. [(1) Any person who requires a permit under the KPDES program shall complete, sign, and submit to the cabinet an application for the permit as required under 401 KAR 5:060, Section 1. Applications shall not be required for KPDES general permits. Operators who elect to be covered by a general permit shall submit written notification to the cabinet at the time the cabinet indicates in Section 3 of this administrative regulation.

(2) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for the permit, as required by 401 KAR 5:060, Section 1.

(3) Permit applications shall comply with the signature and certification requirements of 401 KAR 5:060, Section 9.

(4) The cabinet shall review for completeness every application for a KPDES permit. Each application submitted by a KPDES new source or KPDES new discharger shall be reviewed for completeness by the cabinet within thirty (30) days of its receipt. Each application for a KPDES permit submitted by an existing source shall be reviewed for completeness within sixty (60) days of receipt. Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. If the application is for an existing source, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the cabinet may request additional information from an applicant if necessary to clarify, modify, or supplement previously submitted material. Requests for the additional information shall not render an application incomplete.

(5) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under KRS Chapter 224 and administrative regulations promulgated pursuant thereto.

(6) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, the cabinet shall notify the applicant and a date shall be scheduled.

(7) The effective date of an application shall be the date on which the cabinet notifies the applicant that the application is complete as provided in subsection (4) of this section.

(8) For each application from a major facility new source, or major facility new discharger, the cabinet shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the cabinet intends to:

- (a) Prepare a draft permit;
- (b) Give public notice;
- (c) Complete the public comment period, including any public hearing;
- (d) Issue a final permit; and
- (e) Complete any formal proceedings under this administrative regulation.

(9) Conflicts of interest.

(a) Any person who issues a permit shall be subject to the conflict of interest provisions of KRS 11A.020 and 11A.030. The director of the Division of Water shall not receive or have received during the previous two (2) years, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) Any person aggrieved by the issuance of a permit under the KPDES administrative regulations may challenge the permit pursuant to Section 13 of this administrative regulation if paragraph (a) of this subsection has been violated.

(c) The hearing officer shall remand any permit issued in violation of paragraph (a) of this subsection to the cabinet for reconsideration.

(d) Following remand, any cabinet employee who reconsiders the permit shall be subject to the conflict of interest provisions set forth in paragraph (a) of this subsection. The reconsideration shall require a new public comment period and public hearing only if information offered during earlier permit proceedings was excluded by the cabinet as a direct result of a conflict of interest.]

Section 2. Review Procedures for Permit Modification, Revocation and Reissuance, or Revocation. A KPDES permit modification, revocation and reissuance, or revocation shall be as established in 40 C.F.R. 124.5, effective July 1, 2009, except that appeals shall be heard as established in Section 13 of this administrative regulation. [(1) Permits may be modified, revoked and reissued, or revoked either at the request of any interested person, including the permittee, or upon the cabinet's initiative. Permits may only be modified, revoked and reissued, or revoked for the reasons specified in 401 KAR 5:070, Sections 6 or 7. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or revocation shall not be subject to public notice, comment, or hearings.

(3) If the cabinet tentatively decides to modify or revoke and reissue a permit under 401 KAR 5:070, Section 6, the cabinet shall prepare a draft permit under Section 3 of this administrative regulation incorporating the proposed changes. The cabinet may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the cabinet shall require the submission of a new application.

(a) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. If a permit shall be revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(b) "Minor modifications" as described in 401 KAR 5:070, Section 6(3) shall not be subject to the requirements of this section.

(4) If the cabinet preliminarily decides to revoke a permit under 401 KAR 5:070, Section 7, the cabinet shall issue a notice of intent to revoke. A notice of intent to revoke shall be a type of draft permit

which follows the same procedure as any draft permit prepared under Section 3 of this administrative regulation.]

Section 3. Draft Permits. Preparation or denial of a draft permit shall be as established in 40 C.F.R. 124.6, effective July 1, 2009.

[(1) Once an application is complete, the cabinet shall preliminarily decide whether to prepare a draft permit or to deny the application.

(2) If the cabinet makes a preliminary decision to deny the permit application, the cabinet shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be a type of draft permit which follows the same procedure as any draft permit prepared under this section. If the cabinet's determination under Section 11 of this administrative regulation is that the preliminary decision to deny the permit application was incorrect, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (4) of this section.

(3) If the cabinet makes a preliminary decision to issue a KPDES general permit, the cabinet shall prepare a draft general permit in accordance with subsection (4) of this section.

(4) If the cabinet decides to prepare a draft permit, the cabinet shall prepare a draft permit that contains the following information:

- (a) All conditions under 401 KAR 5:065, Section 1;
- (b) All compliance schedules under 401 KAR 5:070, Section 2;
- (c) All monitoring requirements under 401 KAR 5:070, Section 3; and

(d) Effluent limitations, standards, prohibitions, and conditions under 401 KAR 5:057, 401 KAR 5:060, 401 KAR 5:065, 401 KAR 5:070, 401 KAR 5:075, and 401 KAR 5:080 and all variances that are to be included.

(5) All draft permits prepared by the cabinet under this section shall be accompanied by a fact sheet and shall be based on the administrative record, publicly noticed, and made available for public comment. The cabinet shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments. A demand for a hearing may be made pursuant to KRS 224.10-420 and Section 13 of this administrative regulation following the issuance of a final decision.]

Section 4. Fact Sheets. A fact sheet shall be prepared as established in 40 C.F.R. 124.8, effective July 1, 2009. [(1) A fact sheet shall be prepared for every draft permit for a major KPDES facility or activity, for every KPDES general permit, for every KPDES draft permit that incorporates a variance or requires an explanation under subsection (3) of this section, and for every draft permit which the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other persons.

(2) The fact sheet shall include, if applicable:

- (a) A brief description of the type of facility or activity which is the subject of the draft permit;
- (b) A quantitative and qualitative description of the discharges described in the application;
- (c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
- (d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (e) A description of the procedures for reaching a final decision on the draft permit including:

1. The beginning and ending dates of the comment period under Section 5 of this administrative regulation and the address where comments will be received;

2. Procedures for requesting a hearing and the nature of that hearing;

3. Any other procedures under KRS 224.10-420 and Section 13 of this administrative regulation by which the public may participate in the final decision;

(f) Name and telephone number of a person to contact for additional information; and

(g) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a

citation to the applicable effluent limitation guidelines or performance standard provisions, and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(3)(a) If the draft permit contains any of the following conditions, an explanation of the reasons why the conditions are applicable:

1. Limitations to control toxic pollutants under 401 KAR 5:065, Section 2(5);
2. Limitations on internal waste streams under 401 KAR 5:065, Section 3(8);
3. Limitations on indicator pollutants under 401 KAR 5:080, Section 1(2)(a);
4. Limitations set on a case-by-case basis under 401 KAR 5:080, Section 1(2)(c)2; or
5. Limitations to meet the criteria for permit issuance under 401 KAR 5:055, Section 2(7).

(b) For every permit to be issued to a treatment works owned by a person other than the Commonwealth or its subdivisions, an explanation of the cabinet's decision on regulation of users under 401 KAR 5:065, Section 2(12).

(4) If appropriate, a sketch or detailed description of the location of the discharge described in the application.

(5) Justification for waiver of any application requirements under 401 KAR 5:060, Section 5.]

Section 5. Public Notice of Permit Actions and Public Comment Period. Public notice of a permit action and the public comment period shall be as established in 40 C.F.R. 124.10, effective July 1, 2009. [(4) Scope.

(a) The cabinet shall give public notice that the following actions have occurred:

1. A permit application has been preliminarily denied under Section 3(2) of this administrative regulation;
2. A draft permit has been prepared under Section 3(4) of this administrative regulation;
3. A hearing has been scheduled under Section 7 of this administrative regulation; or
4. A KPDES new source determination has been made in accordance with the definition in 401 KAR 5:002.

(b) Public notice shall not be required if a request for permit modification, revocation and reissuance, or revocation is denied under Section 2 of this administrative regulation. Written notice of that denial shall be given to the requester and to the permittee.

(c) Public notices may describe more than one (1) permit or permit action.

(2) Timing.

(a) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (1) of this section shall allow at least thirty (30) days for public comment.

(b) Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

(3) Methods. Public notice of activities described in subsection (1)(a) of this section shall be given by the following methods:

(a) The cabinet shall mail a notice to the persons listed in subparagraphs 1 through 5 of this paragraph. Any person otherwise entitled to receive notice under this paragraph may waive their rights to receive notice for any classes and categories of permits:

1. The applicant, except for KPDES general permittees, and Region IV, EPA;
2. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historical Society and other appropriate government authorities, including any affected states;
3. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
4. Any user identified in the permit application of a privately owned treatment works; and
5. Persons on a mailing list developed by:
 - a. Including those who request in writing to be on the list;

b. Soliciting persons for area lists from participants in past permit proceedings in that area; and

c. Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to that request.

(b) For major permits and KPDES general permits, the cabinet shall publish a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(c) In a manner constituting legal notice to the public under Kentucky law; and

(d) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) Contents.

(a) All public notices. All public notices issued under this administrative regulation shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except for KPDES draft general permits under 401 KAR 5:055, Section 5;

3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit, for KPDES general permits if there is no application;

4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit as the case may be, fact sheet, and the application;

5. A brief description of the comment procedures required by Sections 6 and 7 of this administrative regulation and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

6. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement shall be satisfied by a map or description of the permit area; and

7. Any additional information considered necessary or proper.

(b) Public notices for hearings. In addition to the general public notice described in paragraph (a) of this subsection, the public notice for a permit hearing under Section 7 of this administrative regulation shall contain the following information:

1. Reference to the date of previous public notices, relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(c) Requests under 401 KAR 5:055, Section 7(4). In addition to the information required under subsection (4)(a) of this section, public notice of a KPDES draft permit for a discharge if a 401 KAR 5:055, Section 7(4) request has been filed under 401 KAR 5:055, Section 3, shall include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under 401 KAR 5:065, Section 2(1) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under CWA Sections 301 or 306 (33 U.S.C. Sections 1311 or 1316); and

2. A statement that a 401 KAR 5:055, Section 7(4), request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request.

(5) In addition to the general public notice described in subsection (4)(a) of this section all persons identified in subsection (3)(a)1, 2, 3, and 4 of this section shall be mailed a copy of the fact sheet, the permit application (if any) and the draft permit (if any).]

Section 6. Public Comments and Requests for Public Hearings. Provisions for public comments and requests for a public hearing shall be as established in 40 C.F.R. 124.11, effective July 1, 2009. [During the public comment period provided under Section 5 of this administrative regulation, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Section 12 of this administrative regulation.]

Section 7. Public Hearings. A public hearing shall be conducted as established in 40 C.F.R. 124.12, effective July 1, 2009. [(1) The cabinet shall hold a public hearing if a significant degree of public interest in a draft permit is found on the basis of requests. The cabinet also may hold a public hearing if, for instance, a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Public notice of the hearing shall be given as specified in Section 5 of this administrative regulation.

(3) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Section 5 of this administrative regulation shall automatically be extended to the close of any public hearing under this section. The cabinet may also extend the comment period by so stating at the hearing.

(4) A tape recording or written transcript of the hearing shall be made available to the public.]

Section 8. Obligation to Raise Issues and Provide Information During the Public Comment Period. An obligation to raise issues and provide information during the public comment period shall be as established in 40 C.F.R. 124.13, effective July 1, 2009. [All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the cabinet's preliminary decision to deny an application, revoke a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period including any public hearing under Section 5 of this administrative regulation. All supporting materials shall be included in full and may not be incorporated by reference, unless they consist of state or federal statutes and regulations, EPA or the cabinet's documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the record available to the cabinet as directed by the cabinet. A comment period longer than thirty (30) days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods, which may be established under Section 5 of this administrative regulation. Nothing in this section shall be construed to prevent any person aggrieved by a final permit decision from filing a demand for a hearing under KRS 224.10-420 and Section 13 of this administrative regulation.]

Section 9. Conditions Requested by the Corps of Engineers and Other Government Agencies. Conditions requested by the Corps of Engineers or another government agency shall be as established in 40 C.F.R. 124.59, established July 1, 2009. [(1) If during the comment period for a KPDES draft permit, the district engineer of the Corps of Engineers advises the cabinet in writing that anchorage and navigation of any of the waters of the Commonwealth would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the district engineer advises the cabinet that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the cabinet shall include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of

Engineers, and shall not be made through the procedures provided in this administrative regulation. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the KPDES permit for the duration of that stay.

(2) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the cabinet may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of KRS Chapter 224.

(3) In appropriate cases the cabinet may consult with one (1) or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the fact sheet or the draft permit.]

Section 10. Reopening of the Public Comment Period. The public comment period shall be reopened as established in 40 C.F.R. 124.14, effective July 1, 2009. [(1) If any data information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the cabinet may take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under Section 3 of this administrative regulation;

(b) Prepare a revised fact sheet under Section 4 of this administrative regulation and reopen the comment period; or

(c) Reopen and extend the comment period under Section 5 of this administrative regulation to give interested persons the opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Section 5 of this administrative regulation shall define the scope of the reopening.

(3) Public notice of any of the above actions will be issued under Section 5 of this administrative regulation.]

Section 11. Issuance and Effective Date of Permit. (1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall notify the applicant and each person who submitted written comments or requested notice of that determination.

(b) The notification shall include reference to the procedures for appealing the decision.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

(a) A later effective date is specified in the determination;

(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or

(c) Comments did not request a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.

(3)(a) The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.

(b) The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit becomes effective. [(1) After the close of the public comment period established in Section 5 of this administrative regulation, the cabinet shall make a determination to issue, deny, modify, revoke and reissue, or revoke a permit.

(a) The cabinet shall notify the applicant and each person who submitted written comments or requested notice of that determination.

(b) The notification shall include reference to the procedures for appealing the decision.

(2) A final permit determination shall become effective thirty (30) days after the service of notice of the determination, unless:

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~~(a) A later effective date is specified in the determination;
(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or~~

~~(c) Comments did not request a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.~~

~~(3)(a) The determination, which is a condition precedent to demanding a hearing pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation, shall be the final permit decision.~~

~~(b) The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit becomes effective. [The issuance and effective date of a KPDES permit shall be as established in 40 C.F.R. 124.15, effective July 1, 2009]. (1) After the close of the public comment period under Section 5 of this administrative regulation, the cabinet shall issue, deny, modify, revoke and reissue, or revoke a permit. The cabinet shall notify the applicant and each person who has submitted written comments or requested notice of that determination. This notice shall include reference to the procedures for appealing the decision. For the purpose of this section, a final permit decision shall mean a final decision to issue, deny, modify, revoke and reissue, or revoke a permit.~~

~~(2) A final permit decision shall become effective thirty (30) days after the service of notice of the decision under subsection (1) of this section, unless:~~

~~(a) A later effective date is specified in the decision;
(b) A stay is granted pursuant to KRS 224.10-420(2) and Section 13 of this administrative regulation; or~~

~~(c) No comments requested a change in the draft permit, and if that occurs, the permit shall become effective immediately upon issuance.~~

~~(3) The determination which is a condition precedent to demanding a hearing under KRS 224.10-420(2) and Section 13 of this administrative regulation shall be the final permit decision. The thirty (30) day appeal period shall begin on the date the determination is entered by the cabinet and shall not begin on the date the permit decision becomes effective.]~~

Section 12. Response to Comments. Response to comments shall be as established in 40 C.F.R. 124.17, effective July 1, 2009. [(1) When any final permit decision is issued under Section 11 of this administrative regulation the cabinet shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. This response shall fully consider all comments resulting from any hearing conducted under this administrative regulation.

(2) The response to comments shall be available to the public. Any demand for a hearing on this response shall be filed according to procedures specified in KRS 224.10-420, 224.10-440, 224.10-470 and any administrative regulations promulgated pursuant thereto.]

Section 13. Hearings pursuant to[under] KRS 224.10-420. (1) A determination pursuant to[under] Section 11 of this administrative regulation [when issued by the cabinet] shall be subject to a demand for a hearing pursuant to KRS 224.10-420(2).

(2) A[Any] person aggrieved by the issuance of a final permit may request[demand] a hearing pursuant to KRS 224.10-420(2).

(3) A[Any] hearing held pursuant to this section shall be subject to the provisions of KRS 224.10-440 and 224.10-470.

(4) Failure to raise an issue[issued] pursuant to Section 8 of this administrative regulation shall not preclude an aggrieved person from making a demand for a hearing pursuant to KRS 224.10-420(2).

Section 14. Substitutions, Exceptions, and Additions to Cited Federal Regulations. (1) "Waters of the Commonwealth" shall be

substituted for "Waters of the United States" in the federal regulations cited in this administrative regulation.

(2) "Cabinet" shall be substituted for "Director", "EPA", and "Regional Administrator" if the authority to administer the federal regulations cited in this administrative regulation has been delegated to the cabinet.

(3) "KPDES" shall be substituted for "NPDES" if the cabinet has been delegated authority to implement the federal regulations cited in this administrative regulation.

(4) "Mail", as used in 40 C.F.R. 124.10 and cited in Section 5 of this administrative regulation, shall include electronic transmission.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 7, 2010

FILED WITH LRC: May 10, 2010 @ 11 a.m.

CONTACT PERSON: Abigail Powell, Regulations Coordinator, Division of Water, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-0111, email: Abigail.Powell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Peter T. Goodmann

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits.

(b) The necessity of this administrative regulation: KRS 224.10-100 authorizes the cabinet to issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe, permits to discharge into any waters of the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.16-050(1) authorizes the cabinet to issue federal permits pursuant to 33 U.S.C. 1342(b) of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387 subject to the conditions imposed in 33 U.S.C. 1342(b) and (d).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the guidelines for processing permit applications for permits to discharge into waters of the Commonwealth.

(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 revises ambiguous terms in accordance with KRS Chapter 13A and provides federal citations and strikes the federal language reproduced in the body of the state administrative regulation. The regulation was amended after comments to re-insert the state-specific language regarding issuance and effective dates of permits and the state-specific appeals process.

(b) The necessity of the amendment to this administrative regulation: This amendment will correct and update the regulation to make it consistent with the corresponding federal regulations. The regulation was amended after comments to re-insert the state-specific language regarding issuance and effective dates of permits and the state-specific appeals process.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 224.16-150, which authorizes the cabinet to implement the Federal Water Pollution Control Act.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will aid in carrying out the goals of KRS 224. The amendment removes discrepancies between current state and federal regulations. The cabinet also believes that citing federal regulations will allow future federal changes in regulatory requirements to be more easily adopted.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment affects individuals, businesses, and organizations that are engaged in the regulated disposal of

treated wastewater under the KPDES permitting program. This administrative regulation affects over 10,000 existing permitted entities including individuals, businesses, and governmental organizations. After analysis of the current types of permits, the administrative regulation is expected to impact the following number of entities:

- a. 1600 businesses per year, through industrial permits, non-public entity sanitary wastewater permits, and stormwater coverage issuances.
- b. 100 organizations per year, through individual sanitary permits issued to nonpublic organizations such as churches, summer camps, and private social or sporting clubs.
- c. 30 governments per year, through permits for Public-Owned Treatment Works (POTWs).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any additional action to comply with this administrative regulation. The amendments to this administrative regulation are simply a change in style and remove any potential inconsistency between the state and corresponding federal regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None of the entities identified in question (3) is expected to incur additional costs. This amendment implements requirements that are already in federal regulations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated community affected by this regulation will not be confused by inconsistencies between existing regulations and the updated federal regulations.

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

- (a) Initially: No additional cost is anticipated.
- (b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Existing permit fees, general funds, and EPA funds. This amendment does not change any source of funding.

(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 fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly establish fees.

(9) TIERING: Is tiering applied? Permit requirements are tiered based upon the nature and size of the wastewater discharge.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation affects wastewater treatment systems that discharge to waters of the Commonwealth. This amendment affects all units of state or local government that have a KPDES discharge permit.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224 and the Clean Water Act, 33 U.S.C. 1251-1387.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? This amendment is not expected to impact revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost is expected.

(d) How much will it cost to administer this program for subsequent years? No additional cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 124 and 33 U.S.C. 1387.

2. State compliance standards. KRS 224.16-050

3. Minimum or uniform standards contained in the federal mandate. The federal standard requires that primacy states meet or exceed the federal requirements for water pollution prevention developed under the Clean Water Act (33 U.S.C. 1251-1387).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control (Amended After Comments)

804 KAR 11:030. Beer tastings.

RELATES TO: KRS 243.150, 243.157, 243.180, 244.590, EO 2009-535

STATUTORY AUTHORITY: KRS 241.060, EO 2009-535

NECESSITY, FUNCTION, AND CONFORMITY: KRS 244.590 prohibits a brewery or distributor from making any gift or rendering any kind of service to any licensee under KRS 243.040 which may tend to influence the licensee to purchase the product of the brewery or distributor to the exclusion in whole or in part of those offered for sale by other persons, except as prescribed by administrative regulation. This administrative regulation is designed to regulate said educational meetings sponsored by breweries, importers, or[and/]or distributors for retail malt beverage licensees in a manner consistent with modern marketing practices and in conformance with relevant statutory provisions and legislative intent. Educational[Such educational] affairs serve a useful purpose for the industry and the consuming public. The amendment to this administrative regulation establishes[This administrative regulation amendment is to establish] the requirements for [the] participation by a brewer, microbrewer, or malt beverage distributor, [of microbreweries] in private parties, [and] charitable fundraisers, or civic events. [Additionally,] EO 2009-535, effective June 16, 2009, abolished the Environmental and Public Protection Cabinet and established the new Public Protection Cabinet, and reorganized the Office of Alcoholic[Alcohol] Beverage Control as the Department of Alcoholic[Alcohol] Beverage Control.

Section 1. Educational meetings, such as malt beverage tastings and the introduction of a new product or special packaging, sponsored by a brewery, importer, or[and/]or distributor for retail licensees under KRS 243.040 are permitted provided:

(1) Such meetings are held on licensed premises, other than premises licensed for the sale of package liquors at retail.

(2) Guests limited to retail malt beverage licensees and their employees.

(3) No service of any alcoholic beverage shall be made to minors.

- (4) Activity limited to serving malt beverages and hors d'oeuvres.
- (5) No alcoholic beverages may be given to be carried away from licensed premises by invited guests.
- (6) No gift, or favor, of any kind may be given to the guests to be taken from the premises at which the meeting is conducted.
- (7) Ten (10) days before the meeting~~[prior]~~ written notification shall~~[must]~~ be given to the Kentucky Department~~[Office]~~ of Alcoholic Beverage Control containing detailed plans of the activity including estimated cost per guest.
- (8) The activity does not include brewery tours.

Section 2. A brewer, microbrewer, or malt beverage distributor~~[Microbrewers]~~ may participate in private parties or fund raisers, or civic events conducted by bona fide charitable organizations, church groups, civic groups, and individuals where~~[at which]~~ malt beverages are~~[beverage produced by its microbrewery is]~~ served, provided:

- (1) The private party, fundraiser, or civic event is~~[or fundraiser]~~ held at a location licensed for the sale of malt beverages at retail or for which a special temporary malt beverage license has been~~[is]~~ issued.
- (2) The malt beverages served are purchased through the retail license holder at the premises at which the event is held, and paid for by the sponsoring organization.
- (3) Industry participation is limited to furnishing pamphlets, literature, and personnel to address the assembly and serve the beverages.
- (4) Written notification of the event shall be submitted to the Malt Beverage Administrator ten (10) days before the event is to be held.

TONY DEHNER, Commissioner

ROBERT D. VANCE, Secretary

APPROVED BY AGENCY: March 11, 2010

FILED WITH LRC: March 13, 2010 at 2 p.m.

CONTACT PERSON: Virginia Vanaman Davis, Internal Policy Analyst IV – Legislative Liaison, Department of Alcoholic Beverage Control, 1003 Twilight Tr., Frankfort, Kentucky 40601, phone (502) 564-4850 ext 1010, fax (502) 564-7479.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Virginia Vanaman Davis

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amendment establishes the requirements for a licensed brewer, microbrewery, and malt beverage distributor, to participate in private parties, charitable fundraisers and civic events. The amendment is patterned after 804 KAR 1:110, which pertains to producers and wholesalers of distilled spirits and wine.

(b) The necessity of this administrative regulation: The Department of Alcoholic Beverage Control is required to promulgate administrative regulations pertaining to the alcoholic beverage industry and the trafficking of alcoholic beverages in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing states: KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations to supervise and control the use, manufacture, sale, transportation, storage, advertising and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation currently assists the Department of Alcoholic Beverage Control in enforcing KRS 244.590 which prohibits a brewer or distributor of malt beverages from making any gift or rendering any kind of service to any licensee under KRS 243.040 which may tend to influence the licensee to purchase the product of the brewery or distributor to the exclusion in whole or in part of those offered for sale by other persons. This proposed administrative regulation amendment will assist the Department of Alcoholic Beverage Control and the malt beverage industry by allowing a licensed brewer, microbrewer, malt beverage distributor, or individual to participate in private parties, charitable fundraisers, and civic

events on the same terms as producers and wholesalers of distilled spirits and wine.

- (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 administrative regulation amendment will more clearly provide what activities are authorized as a brewer licensed under KRS 243.150, a microbrewer licensed under KRS 243.157, and a malt beverage distributor licensed under KRS 243.180 when participating in a malt beverage tasting event that is held away from the premises where malt beverages are produced or distributed.

(b) The necessity of the amendment to this administrative regulation: This proposed administrative regulation amendment is necessary to regulate the provisions of KRS 244.590 which prohibits a brewer or distributor from making any gift or rendering any kind of service to any licensee under KRS 243.040 which may tend to influence the licensee to purchase the product of the brewer or distributor to the exclusion in whole or in part of those offered for sale by other persons, except as prescribed by this administrative regulation. The amendment will allow a licensed brewer, microbrewer, and malt beverage distributor, to participate in private parties and charitable fundraisers on the same terms that producers and wholesalers of distilled spirits and wine are authorized under 804 KAR 1:110, Section 2.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 241.060(1) provides that the board may promulgate reasonable administrative regulations to supervise and control the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction.

(d) How the amendment will assist in the effective administration of the statute: The amendment will allow a licensed brewer, microbrewer, malt beverage distributor, or individual to participate in private parties, charitable fundraisers, and civic events on similar terms that producers and wholesalers of distilled spirits and wine may do so under 804 KAR 1:110, Section 2.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects only brewers licensed under KRS 243.150, microbrewers licensed under KRS 243.157, and malt beverage distributors licensed under KRS 243.180 that provide malt beverage tastings to the consumer for educational purposes. As of May 5, 2010 the Commonwealth of Kentucky, Department of Alcoholic Beverage Control, has: Nine (9) microbreweries located in Kentucky, one (1) brewer located in Kentucky, thirty-six (36) malt beverage distributors, eighteen (18) out-of-state brewers, and 104 out-of-state microbrewers.

(4) Provide an analysis of how entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

here are no fees or costs required by the proposed administrative regulation amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities may experience business benefits from the ability to participate in private parties, charitable fundraisers, and civic events in accordance with the amendment, if they choose to avail themselves of it.

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

(a) Initially: There will be no cost to implement this proposed administrative regulation amendment.

(b) On a continuing basis: There will be no cost to implement or maintain and enforce this proposed administrative regulation amendment.

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

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(a) Initially: There will be no cost to implement this proposed administrative regulation amendment.

(b) On a continuing basis: There will be no cost to implement or maintain and enforce this proposed administrative regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The existing Trust and Agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation amendment.

(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, costs or assessments will be necessary to implement this proposed administrative regulation amendment. The existing Trust and Agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this proposed administrative regulation amendment.

(8) State whether this administrative regulation establishes any fees or directly or indirectly increases any fees: There will be no fees or any cost, directly or indirectly, to implement this proposed administrative regulation amendment.

(9) TIERING: Is tiering applied? The statutory requirements are applicable to all ABC licensees and applicants for licensing and accordingly, tiering does not apply.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Commonwealth of Kentucky, Department of Alcoholic Beverage Control Enforcement Division will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

State: KRS 241.060, 243.040, 243.150, 243.157, 243.180, 244.570, 244.590.

Federal: 27 U.S.C. 205(a)-(d) and 27 C.F.R., parts 6, 8, 10, and 11.

27 C.F.R. part 6, Sec. 6.91, Samples.

27 C.F.R. part 6, Sec. 6.94, Educational seminars.

27 C.F.R. part 6, Sec. 6.95, Consumer tasting and samplings at retail establishments.

27 C.F.R. part 6, Sec. 201, Pub.L.85-859,72 Stat.1334, as amended (26 U.S.C. 5053)

27 C.F.R. part 6, Sec. 25.206, Removal of Beer-Tastings.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will not be any effects on the proposed administrative regulation amendment regarding expenditures and revenue at the state or local level for the Kentucky Department of Alcoholic Beverage Control or any local city or county ABC administrators.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this proposed administrative regulation amendment for any year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated by the amendment of this regulation by the state or local governments.

(c) How much will it cost to administer this program for the first year? There will be no effect of this administrative regulation on the expenditures of the Department of Alcoholic Beverage Control. The existing Trust and Agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no effect of this administrative regulation on the expenditures of the Department of Alcoholic Beverage Control. The existing Trust and Agency account, KRS 243.025, already provides the necessary funding to be used for the implementation and enforcement of this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenue (+/-):

Expenditures (+/-):

Other Explanation: There should be no cost to administer this program at the local government level for this year or subsequent years.

FEDERAL MANDATRE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

Federal Title 27, Alcohol, tobacco Products and Firearms
Chapter 1-Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury
Part 6, "Tied -House"-Table of contents
Subpart D, Exceptions
Sec.6.91 Samples
Meets federal standards: 27 U.S.C. 205(2)-(d) and 27 C.F.R. parts, 6, 8, 10, & 11.

2. State compliance standards. Meets state standards: KRS 244.590.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for this administrative regulation or amendment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for this administrative regulation or amendment.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, MAY 14, 2010

COUNCIL ON POSTSECONDARY EDUCATION
(Amendment)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 164.945, 164.946, 164.992, 165A.320

STATUTORY AUTHORITY: KRS 164.947(1), 164.020(37)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. This administrative regulation establishes the private college licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(9) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(10) "President" means the president of the Council on Postsecondary Education.

(11) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2) An out-of-state college shall be licensed separately for each instructional site in Kentucky. An out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 3. Licensure Application Procedures. (1)(a) An application for a license shall be submitted on the form entitled:

1. Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

2. Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(b) A college that is not licensed as of the effective date of this administrative regulation shall submit an application for a license within sixty (60) working days of the effective date of this administrative regulation.

(2) An application shall be accompanied by copies of the following:

(a) College charter;

(b) College catalog;

(c) College constitution and bylaws;

(d) Student enrollment application;

(e) Student contract or agreement;

(f)1. Documentation of accreditation, licensure, or approval by appropriate agencies; and

2. Disclosure of any prior loss or denial of:

a. Accreditation with dates and reason and loss or denial; or

b. Licensure or approval by an agency in this state or another state with dates and reason for the loss of denial; and

(g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days following the site visit.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

- (a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;
- (b) Deny the application for a license;
- (c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or
- (d) Issue a conditional license in accordance with subsection (2) of this section if the college has:

- 1. Not met all of the standards for licensure at the time the application is filed; and
- 2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) A conditional license shall not exceed a period of two (2) years and shall include the conditions a college shall meet in order for a college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) A college's failure to satisfy the conditions within the specified timeframe shall:

- 1. Result in automatic revocation of the conditional license; or
- 2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to a college's written request for an extension with supporting justification.

(b) If a college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020" shall be required at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020" shall be required at least (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020" shall be required at least (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020" at least ninety (90) days prior to implementation of a change to[:

- 1. offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus[; or
- 2. Establish an instructional site away from the main campus for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program].

(e) A "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020" shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

- 1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or
- 2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program.

(f) A college shall submit a "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020" at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed adminis-

trative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020" within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

- 1. A college being placed in a probationary status;
- 2. A college losing accreditation or licensure; or
- 3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. Within thirty (30) working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

- (1) Approve the supplementary application and amend the current license without changing the renewal date;
- (2) Deny the supplementary application without amendment to the college's license;
- (3) Suspend or revoke a college's license; or
- (4) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this subsection in order to be licensed.

(1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

- (a) Financial statements including:
 - 1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;
 - 2. An audit report prepared by an independent certified public accountant for each corporation of the college; and
 - 3. If available, audit reports for the past three (3) years;
- (b) The name of a bank or other financial institution used by the college as a reference;
- (c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents when acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) An in-state college shall:

- 1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;
- 2. Maintain an unrestricted endowment equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or
- 3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) A college shall provide a statement from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted endowment or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted endowment or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the appropriate application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

(d) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(e) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the appropriate application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(7) Library resources. The library shall be appropriate to support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president at the time of license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2 of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is:

a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

i. Licensed by the Council on Postsecondary Education; or

ii. A state-supported postsecondary education institution created by KRS 164.001.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A state-supported postsecondary education institution created by KRS 164.001.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs, and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after the effective date of this administrative regulation, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the col-

lege is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form: " (Name of College) is licensed by the Kentucky Council on Postsecondary Education."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

- (a) The college's policies on grades, attendance, and conduct;
- (b) A description of the instructional program;
- (c) A detailed schedule of all charges, rentals, and deposits;
- (d) The schedule of refunds of all charges, rentals, and deposits; and
- (e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent.

(b) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his background, to record his progress through the instructional program, and for reference purposes.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records in the event the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college as indicated below:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2. a. Except as provided in clause b of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2 of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply For A License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" to the president in accordance with subsection (2) of this section. The application shall contain the following information:

(a) Financial Information.

1. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

2. A statement prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation; and

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3. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year;

(b) Institutional information.

1. Name and address of college;

2. Chief executive officer's name, title, address, phone number, fax number, and email address;

3. Institutional liaison's name, title, address, phone number, fax number, and email address;

4. A current list of the college's agents;

5. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last year; and

6. Copy of any articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last year;

(c) Accreditation status.

1. If the college is accredited by an accrediting agency, verification of the college's accreditation status; or

2. If the college is not accredited by an accrediting agency, a statement indicating if, when, and from whom the college will seek accreditation;

(d) Tuition for current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

(e) A copy of the college's current catalog;

(f) For an in-state college, a list of all licensed instructional sites away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

(g) Program information.

1. Changes, if any, in program requirements for each program within the last year including admission requirements, courses required, and the number of credit hours required for the program or major;

2. Results of the most recent program evaluation;

3. Methods used to assess student achievement;

4. Results of the most recent assessment of student achievement; and

5. A list of programs withdrawn within the last year in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

(h) Faculty information. Vitae for each program faculty member employed within the last year;

(i) Facilities information. Verification of compliance with all applicable local, state, and federal safety and fire codes; and

(j) Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(2)(a) A college whose license expires by July 1, 2010 shall complete and submit the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" for maintenance of its license by May 1, 2010. If that college's license is subsequently renewed, the college shall complete the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" in accordance with paragraph (b) of this subsection for future renewals.

(b) A college whose license expires after July 1, 2010 shall complete the "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" by April 1 of every year beginning April 1, 2011.

(3) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative regulation.

(4) Within ninety (90) working days of the submission of a complete and accurate "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" if a

site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

(a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;

(b) Deny maintenance or renewal of the college's license;

(c) Maintain the college's license without changing the college's license renewal date; or

(d) Renew the college's license to June 30 of the next year.

(5) A college's failure to submit a complete and accurate "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020" shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the "Licensure Compliance Reporting Manual".

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating of soliciting shall comply with Section 8(13)(g) of this administrative regulation and KRS 164.020(23);

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed.

(1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing consistent with the provisions of KRS 13B.005-13B.170, in order to determine the facts if the president has determined that there is sufficient cause for a suspension or revocation of a license or placement of a college's license in a probationary status.

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If the findings warrant, the president shall impose the sanctions authorized in this section.

(5) If it is determined that the public interest requires that sanctions be imposed, the president shall take one (1) or more of the following steps:

(a) Impose one (1) of the following sanctions:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year; or

3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(6) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(7) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Within fourteen (14) days, the report of the appeals officer shall be forwarded to the college and to the President of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;

2. Renew the license;

3. Impose one (1) of the sanctions authorized in this section;

4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the "Kentucky Licensure Fee Schedule" that is incorporated by reference in Section 16 of this administrative regulation.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", November 2009;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", November 2009;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", November 2009;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(g) "Supplementary Application to Operate as an In-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", November 2009;

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", November 2009;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", November 2009;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", November 2009;

(k) "Licensure Compliance Reporting Manual", September 8, 2009; and

(l) "Kentucky Licensure Fee Schedule", January 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PAUL E. PATTON, Chair

APPROVED BY AGENCY: May 13, 2010

FILED WITH LRC: May 13, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, June 29, 2010 at 10 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays 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 shall be accepted until June 30, 2010. 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: Sarah Levy, Senior Associate, Academic Affairs, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 350, fax (502) 573-1535, email sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy, Senior Associate, Academic Affairs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation as a whole sets the standards and rules related to the licensing of private postsecondary education institutions, and proprietary postsecondary education institutions that are not licensed by the State Board of Proprietary Education.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 requires that the Council on Postsecondary Education, by regulation, shall adopt standards and procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals and maintenance.

(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 corrects a minor technical error in Section 6(1)(d). The correction is to delete one sentence that was mistakenly added to the version of the regulation which became effective March 5, 2010, which results in an unintended inconsistency in the regulation. The amendment restores the regulation to its intended language and process, and achieves consistency throughout the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct a minor technical error by deleting one sentence to achieve consistency throughout the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms exactly to the authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will correct a minor technical mistake in the March 5, 2010 version of the regulation to achieve consistency in the regulation and restore the regulation language and process to the way they have existed since the 1991 version of the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are over 50 postsecondary education institutions licensed by the Council on Postsecondary Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment deletes one sentence, so no new action is required by the entities. The amendment corrects a minor unintended technical mistake in the March 5, 2010 version of the regulation to achieve consistency in the regulation and restore the regulation language and process to the way it has been since the 1991 version of the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to delete the sentence does not cost the entities anything.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to delete the sentence benefits the entities by correcting a minor unintended technical mistake in the March 5, 2010 version of the regulation to restore that portion of the regulation to the way it has been since 1991 version of the regulation.

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

(a) Initially: The amendment to delete one sentence will have no cost.

(b) On a continuing basis: The amendment to delete one sentence will have no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The amendment requires no funding. It is noted that the sources of funding for the implementation of the already existing regulation as a whole are state appropriations to the Council, fees, and reimbursement from colleges for costs of site visits.

(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 for the amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied in the amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? The amendment, which is just the deletion of sentence, does not. It is noted that the already existing regulation as a whole involves the licensure of private colleges, which is done by the state government's Council on Postsecondary Education.

2. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendment to the regulation will not have an impact. It is noted that the already existing regulation as a whole involves the licensure of private colleges, which is done by the state government's Council on Postsecondary Education.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. While the amendment is just the deletion of one sentence, it is noted that the already existing regulation as a whole is required and authorized by KRS 164.020(37), 164.945, 164.946, 164.947, 164.992, 165A.320.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year? The amendment has no cost.

(d) How much will it cost to administer this program for subsequent years? The amendment has no cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The amendment will generate no revenue.

Expenditures (+/-): The amendment will have zero cost.

Other Explanation:

GENERAL GOVERNMENT CABINET Board of Veterinary Examiners (Amendment)

201 KAR 16:030. License, renewal notice, exemption.

RELATES TO: KRS 321.193, 321.200(1)(e), 321.211, 321.221, 321.441

STATUTORY AUTHORITY: KRS 321.235, 321.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193, 321.221, and 321.441 require the board to issue a license or registration to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine or as a veterinary technician or veterinary technologist in this state. KRS 321.211 and 321.441 provide for the renewal of the license or registration. This administrative regulation requires the mailing of a renewal notice to all licensed veterinarians, veterinary technicians, and veterinary technologists and requires all licensed veterinarians, veterinary technicians, and veterinary technologists to complete the renewal notice and return it, along with the renewal fee to the board. It further requires all licensed veterinarians, veterinary technicians, and veterinary technologists to keep the board apprised of the current address of the licensee. It exempts certain veterinarians from licensure in relation to the World Equestrian Games.

Section 1. (1) The Kentucky Board of Veterinary Examiners shall on or about August of each even-numbered year mail to each licensed veterinarian a renewal notice.

(2) The Kentucky Board of Veterinary Examiners shall on or about August of each year mail to each licensed veterinary technician, and veterinary technologist an annual renewal notice.

(3) This renewal notice shall be completed and received by the board on or before September 30 of the appropriate year.

(4) Renewals bearing a postmark of September 30 or earlier shall be considered received in a timely manner.

(5)(a) The renewal fee shall be attached to the completed renewal notice when it is returned to the board.

(b) The renewal fee shall be paid by personal check, certified check, cashier's check or postal money order, payable to the Kentucky State Treasurer.

(6) All information requested on the renewal notice shall be furnished to the board when the completed renewal notice is returned to the board.

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Section 2. Every licensed veterinarian, veterinary technician, or veterinary technologist shall file his proper and current mailing address with the board at its principal office and shall immediately notify the board of any and all changes of his mailing address.

Section 3. (1) Every licensed veterinarian shall list their continuing education hours received pursuant to 201 KAR 16:050 with the renewal form and furnished the information to the board.

(2)(a) The board shall not renew the license of any person who fails to receive or appropriately document the required hours of continuing education.

(b) The license shall expire and subsequently be terminated as prescribed by KRS 321.211.

Section 4. (1) Persons listed by the Fédération Équestre Internationale (FEI) as qualified to provide veterinary services are exempt from licensure for the limited purpose of providing veterinary services to horses participating in the World Equestrian Games.

(2) This exemption shall be limited to the period relating to the World Equestrian Games beginning on September 1, 2010 until October 31, 2010.

DR. PERRY WORNALL, DVM, Chair

APPROVED BY AGENCY: March 25, 2010

FILED WITH LRC: May 13, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, June 24, 2010 at 1 p.m. at Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 close of business Wednesday, June 30, 2010. 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: Frances Short, Director, Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-3296, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Frances Short, Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for licensure and renewal of licensure for veterinarians, veterinary technicians, and veterinary technologists.

(b) The necessity of this administrative regulation: This regulation is necessary for provide licensees with a clearly defined procedure for licensure and licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235(3) and 321.240(5) authorized the board to promulgate regulations to carry out and enforce the provisions of KRS Chapter 321. KRS 321.200(1)(e) exemptions lawfully licensed veterinarians from other states from licensure under certain circumstances.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets forth guidelines for licensure and renewals.

(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 exempt lawfully qualified veterinarians from licensure requirements for the World Equestrian Games.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to clarify the limited exemption for lawfully qualified veterinarians residing in other states from licensure while attending to horses at the World Equestrian Games.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.200(1)(e) exempts lawfully qualified veterinarians residing in other states from licensure.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will allow the Board to enforce the requirements as to team veterinarians working with foreign teams as recognized by the Fédération Équestre Internationale (FEI).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 50 national teams will be competing in the World Equestrian Games during the limited period in question.

(4) Provide an analysis of how the entities identified in question (3) three will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) three will have to take to comply with this administrative regulation or amendment: No action will be required from the persons listed in the answer to question (3) three.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) three: This administrative regulation will clarify the period during which the individuals may practice of the specific teams they represent.

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

(a) Initially: The board estimates that no additional costs will be incurred by this new regulation.

(b) On a continuing basis: The board estimates that no additional costs will be incurred by the new regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by license holders and applicants.

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

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

(9) TIERING: Is tiering applied? Yes. Criteria apply equally to veterinarians who come within the requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Veterinary Examiners.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.181(5)(b), 321.200(1)(e).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)**

401 KAR 59:015. New indirect heat exchangers.

RELATES TO: KRS 224.10-100, EO 2009-538, 40 C.F.R. Part 60, Appendices A, B [EO-2008-507, 2008-531, 40 C.F.R. Part 60]

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires[authorizes] the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. EO 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet[EO-2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet]. This administrative regulation provides for the control of emissions from new indirect heat exchangers.

Section 1. Definitions. (1) "Affected facility" means an indirect heat exchanger having a heat input capacity greater than one (1) million BTU per hour (MMBTU/hr) [Indirect heat exchanger" or "IHE" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a fluid medium that does not come in contact with or add to the products of combustion.]

(2) "CEMS" means continuous emissions monitoring system.

(3) "Classification date" means:

(a) August 17, 1971, for affected facilities[indirect heat exchangers] with a capacity greater than 250 (MMBTU/hr)[million BTU per hour] heat input;

1. For particulate emissions;

2. For sulfur dioxide emissions; and

3. For [particulate emissions, sulfur dioxide emissions, or] nitrogen oxide emissions if fuels other than lignite are burned;

(b) April 9, 1972, for affected facilities[indirect heat exchangers] with a capacity of 250 MMBTU/hr[million BTU per hour] heat input or less for particulate emissions and sulfur dioxide emissions; and

(c) December 22, 1976, for affected facilities[indirect heat exchangers] with a capacity greater than 250 MMBTU/hr[million BTU per hour] heat input for nitrogen oxides if lignite fuel is burned.

(4) "COMS" means continuous monitoring system for opacity.

(5) "Indirect heat exchanger" means a piece of equipment, apparatus, or contrivance used for the combustion of fuel in which the energy produced is transferred to its point of usage through a medium that does not come in contact with or add to the products of combustion.

(6) "PM CEMS" means a particulate matter continuous emissions monitoring system.

Section 2. Applicability. (1) This administrative regulation shall apply to affected facilities[indirect heat exchangers having a heat input capacity greater than one (1) million BTU per hour] commenced on or after the applicable classification date.

(2) Affected facilities[Units] subject to 40 C.F.R. 60.40 to 60.46 (Subpart D); 60.40Da to 60.52Da (Subpart Da); 60.40b to 60.49b (Subpart Db); or 60.40c to 60.48c (Subpart Dc) shall be exempt from this administrative regulation for each pollutant covered under this administrative regulation with a specific emission standard in the applicable New Source Performance Standard (NSPS) codified at 40 C.F.R. Part 60.

Section 3. Method for Determining Allowable Emission Rates. (1) Except as provided in subsection (3) of this section, the total rated heat input capacity of all affected facilities[IHEs located] at a source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet, shall be used as specified in Sections 4 and 5 of this administrative regulation to determine the allowable emission rate in terms of pounds per million BTU (lb/MMBTU)[lbs per million BTU] heat input.

(2) The permitted allowable emissions rate of an affected facility[indirect heat exchanger] shall not be changed due to inclusion or shutdown of another affected facility[heat exchanger] at the source.

(3) Sources may petition the cabinet to approve an allowable emission rate apportioned independently from individual heat input pursuant to this subsection, as follows:

(a) The following equation shall be used to determine the allowable emissions rate: $F = (AB + DE) / C$, in which [if the conditions specified in this subsection are met:

(a) The allowable emission rate shall be determined according to the following equation: $F = (AB + DE) / C$ in which:]

1. A = allowable emission rate (in lb/MMBTU) heat input [lbs per million BTU heat input as] determined pursuant to subsection (1) of this section[];

2. B = total rated heat input (in MMBTU/hr) of all affected facilities[millions of BTU per hour] of all indirect heat exchangers] at the source commenced on or after the applicable classification date, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

3. C = total rated heat input (in MMBTU/hr of all affected facilities[millions of BTU per hour] of all indirect heat exchangers] at the source, including those for which an application to construct, modify, or reconstruct has been submitted to the cabinet;

4. D = allowable emission rate (in lb/MMBTU heat input) [lbs per million BTU input] as] determined pursuant to 401 KAR 61:015, Section 3(1);

5. E = total rated heat input (in MMBTU/hr) of all affected facilities[in millions of BTU per hour of all indirect heat exchangers] at the source commenced before the applicable classification date; and

6. F = alternate allowable emission rate in lbs per actual MMBTU heat input [million BTU input].

(b) The total emissions (in lb/hr) from all affected facilities[lbs per hour] from all indirect heat exchangers] at the source subject to this administrative regulation divided by the total actual heat input (in MMBTU/hr) of the affected facilities[millions of BTU per hour] of the indirect heat exchangers] shall not exceed the alternate allowable emission rate as determined in paragraph (a) of this subsection;.]

(c) A source operating an affected facility that [IHE, which] is not subject to a federal NSPS codified at [new source performance standard (NSPS) of] 40 C.F.R. Part 60 only because the affected facility [IHE] commenced construction prior to the NSPS classification date, shall not allow emissions of the affected facility to exceed the allowable emission rate determined pursuant to [by the IHE's rated heat input as specified in] Sections 4 and 5 of this administrative regulation;.]

(d) The source shall demonstrate compliance with this subsection by conducting a performance test pursuant to 401 KAR 50:045 for each affected facility[indirect heat exchanger] subject to this administrative regulation; and.]

(e) The source shall demonstrate that compliance with this subsection shall be maintained [with this subsection] on a continual basis.

Section 4. Standard for Particulate Matter. Except as provided in Section 3(3) of this administrative regulation, an affected facility

ty[indirect heat exchanger] subject to this administrative regulation shall not cause emissions of particulate matter in excess of:

(1)(a) 0.56 lb/MMBTU actual heat input for sources with total heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source;

(b) 0.10 lb/MMBTU actual heat input for sources with total heat input totaling 250 MMBTU/hr or more for all affected facilities at the source; and

(c) 0.9634 multiplied by the quantity obtained by raising the total heat input capacity (in MMBTU/hr) to the -0.2356 power for sources with heat input values totaling greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at the source; and[0.56 lbs per million BTU actual heat input for IHEs with total heat input capacity of ten (10) million BTU per hour or less;

(b) 0.40 lbs per million BTU heat input for IHEs with total heat input capacity of 250 million BTU per hour or more; and

(c) 0.9634 multiplied by the quantity obtained by raising the total heat input capacity (in millions BTU per hour) to the -0.2356 power for IHEs with heat input values greater than ten (10) million BTU per hour and less than 250 million BTU per hour; and]

(2) Twenty (20) percent opacity except:

(a) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source,[indirect heat exchangers with heat input capacity of 250 million BTU per hour or more;] a maximum of twenty-seven (27) percent opacity shall be allowed for one (1) six (6) minute period in any sixty (60) consecutive minutes;

(b) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source,[indirect heat exchangers with heat input capacity of less than 250 million BTU per hour;] a maximum of forty (40) percent opacity shall be allowed for a maximum of six (6) consecutive minutes in any sixty (60) consecutive minutes during fire box cleaning or soot blowing; and

(c) For emissions from an affected facility[indirect heat exchanger] caused by building a new fire, emissions during the period required to bring the boiler up to operating conditions shall be allowed, if the method used is recommended by the manufacturer and the time does not exceed the manufacturer's recommendations.

Section 5. Standard for Sulfur Dioxide. (1) Except as provided in Section 3(3) of this administrative regulation, affected facilities[indirect heat exchangers] subject to this administrative regulation shall not cause emissions of gases that contain sulfur dioxide in excess of:

(a) For sources with heat input capacity totaling ten (10) MMBTU/hr or less for all affected facilities at the source[IHEs with total heat input capacity of ten (10) million BTU per hour or less;]

1. Three and zero-tenths (3.0) lb/MMBTU[lbs per million BTU] actual heat input for combustion of liquid and gaseous fuels; and

2. Five and zero-tenths (5.0) lb/MMBTU[lbs per million BTU] actual heat input for combustion of solid fuels;

(b) For sources with heat input capacity totaling 250 MMBTU/hr or more for all affected facilities at the source[IHEs with total heat input capacity of 250 million BTU per hour or more;]

1. Eight-tenths (0.8) lb/MMBTU[lbs per million BTU] actual heat input for combustion of liquid and gaseous fuels; and

2. One and two-tenths (1.2) lb/MMBTU[lbs per million BTU] actual heat input for combustion of solid fuels; and

(c) For sources with total heat input values greater than ten (10) MMBTU/hr and less than 250 MMBTU/hr for all affected facilities at the source[IHEs with heat input values between those specified in paragraphs (a) and (b) of this subsection;], the standard, in lb/MMBTU[lbs per million BTU] actual heat input, shall be equal to:

1. The value 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting liquid fuels;[For combustion of liquid and gaseous fuels, the value 7.7223 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4106 power; and]

2. The value 7.7223 multiplied by the quantity obtained by raising to the -0.4106 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting gaseous fuels; and

3. The value 13.8781 multiplied by the quantity obtained by raising to the -0.4434 power the total heat input capacity (in MMBTU/hr) of the affected facilities combusting solid fuels.[For combustion of solid fuels, the value 13.8781 multiplied by the quantity obtained by raising the total heat input capacity of the IHE in millions BTU per hour to the -0.4434 power;]

(2) [Compliance shall be based on the total heat input from all fuels burned.

(3)] For simultaneously burning different fuels in combination, the applicable standard shall be determined by prorating BTUs pursuant to the following equation: Allowable sulfur dioxide emission in lb/MMBTU/hr[lbs per million BTU per hour] heat input = $\{y(a) + z(b)\}/(y + z)$, in which:

(a) y = percent total heat input derived from liquid or gaseous fuel;

(b) z = percent total heat input derived from solid fuel;

(c) a = allowable sulfur dioxide emission in lb/MMBTU/hr[lbs per million BTU] heat input derived from liquid or gaseous fuel; and

(d) b = allowable sulfur dioxide emission in lb/MMBTU/hr[lbs per million BTU] heat input derived from solid fuel.

(3) Compliance shall be based on the total heat input from all fuels burned.

Section 6. Standard for Nitrogen Oxides. (1) An affected facility[indirect heat exchanger] with heat input capacity of 250 MMBTU/hr[million BTU per hour] or more shall not cause emissions of gases that contain nitrogen oxides expressed as nitrogen dioxide in excess of:

(a) Twenty hundredths (0.20) lb/MMBTU heat input (0.36 grams per million calories (g/MMCal))[0.20 lbs per million BTU heat input (0.36 g per million cal)] derived from gaseous fuel;

(b) Thirty hundredths (0.30) lb/MMBTU heat input (0.54 g/MMCal) [0.30 lbs per million BTU heat input (0.54 g per million cal)] derived from liquid fuel;

(c) Thirty hundredths (0.30) lb/MMBTU heat input (0.54 g/MMCal) [0.70 lbs per million BTU heat input (1.26 g per million cal)] derived from solid fuel except lignite;

(d) Sixty hundredths (0.60) lb/MMBTU heat input (1.08 g/MMCal)[0.60 lbs per million BTU heat input (1.08 g per million cal)] derived from lignite or lignite and wood residue except as provided in paragraph (e) of this subsection; and

(e) Eighty hundredths (0.80) lb/MMBTU [0.80 lbs per million BTU] derived from lignite that is mined in North Dakota, South Dakota, or Montana and that is burned in a cyclone-fired unit[IHE].

(2) Except as provided in subsections (3) and (4) of this section, if different fuels are burned simultaneously in any combination, the allowable nitrogen dioxide emission shall be prorated using the following equation: Allowable nitrogen dioxide emission in lb/MMBTU/hr heat input = $\{x(0.20) + y(0.30) + z(0.70) + w(0.60)\} / \{x + y + z + w\}$, in which: [equation: Allowable nitrogen dioxide emission in lbs per million BTU per hour heat input = $\{x(0.20) + y(0.30) + z(0.70) + w(0.60)\} / \{x + y + z + w\}$, in which:]

(a) x = percent of total heat input derived from gaseous fuel;

(b) y = percent of total heat input derived from liquid fuel;

(c) z = percent of total heat input derived from solid fuel (except lignite); and

(d) w = percent of total heat input derived from lignite.

(3) For fossil fuel containing at least twenty-five (25) percent by weight coal refuse burned in combination with gaseous, liquid, or other solid fossil fuel; wood residue; or biomass, the standard for nitrogen oxides shall not apply.

(4) A Cyclone-fired unit[IHEs] burning fuel containing at least twenty-five (25) percent lignite mined in North Dakota, South Dakota, or Montana shall be subject to subsection (1)(e) of this section for all types of fuel combusted in combination with the lignite.

Section 7. Emission and Fuel Monitoring. [This section shall apply to sources operating indirect heat exchangers with rated heat input capacity greater than 250 million BTU per hour.]

(1) Except as provided in subsection (2) of this section, sources shall install, calibrate, maintain, and operate a continuous monitoring system for measuring:

(a) Opacity of emissions;

(b) Sulfur dioxide emissions;

- (c) Nitrogen oxides emissions; and
 (d) Oxygen or carbon dioxide emissions [in the flue gases].
 (2) Subsection (1) of this section shall not apply as follows:

(a) For affected facilities[IHEs] burning only gaseous fuel, a continuous monitoring system for opacity (COMS) shall not be required;

(b) For affected facilities[IHEs] burning only natural gas, wood, wood residue, or biomass; or a combination of natural gas, wood, wood residue, or biomass, a continuous emissions monitoring system (CEMS) for sulfur dioxide emissions shall not be required;

(c) 1. For nitrogen oxides[oxide], installation of CEMS may be delayed until after the initial performance tests required by 401 KAR 59:005, Sections 2 and 4(2); and

2. If the initial performance test results show nitrogen oxide emissions:

a. Are less than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, CEMS for nitrogen oxides shall not be required; or

b. Are equal to or greater than seventy (70) percent of the applicable standard in Section 6 of this administrative regulation, the source shall install CEMS for nitrogen oxides within one (1) year after the date of the initial performance tests;

(d) For a source exempt from installing COMS pursuant to paragraph (a) of this subsection and CEMS for sulfur oxides and nitrogen oxides pursuant to paragraphs (b) and (c) of this subsection, a continuous monitoring system for measuring oxygen or carbon dioxide shall not be required;

(e) For an affected facility not using a flue gas desulfurization device[IHEs not using flue gas desulfurization devices], CEMS for sulfur dioxide emissions shall not be required if the source monitors sulfur dioxide emissions by fuel sampling and analysis pursuant to subsection (5) of this section.

(3) For performance evaluations subject to 401 KAR 59:005, Section 4(3), and calibration checks subject to 401 KAR 59:005, Section 4(4), the following procedures shall be used:

(a) Reference Methods 6-6C or 7-E, incorporated by reference in 401 KAR 50:015, as applicable, shall be used for conducting performance evaluations of CEMS for sulfur dioxide and nitrogen oxides;

(b) Sulfur dioxide or nitric oxide, as applicable, shall be used for preparing calibration gas mixtures pursuant to 40 C.F.R. Part 60, Appendix B, Performance Specification 2;

(c) The span value for a continuous monitoring system:

1. For an affected facility[IHEs] burning fossil fuels, shall be eighty (80), ninety (90), or 100 percent; and

2. For systems measuring sulfur oxides or nitrogen oxides, shall be determined pursuant to the following table;

DETERMINATION OF SPAN VALUE (in parts per million)		
Fossil Fuel	Span Value for Sulfur Dioxide	Span Value for Nitrogen Oxides
Gas	*	500
Liquid	1,000	500
Solid	1,500	500
Combinations	1,000y + 1,500z	500(x + y) + 1,000z

3. For the table in subparagraph 2 of this paragraph:

a. * shall indicate that a value shall not be applicable;

b. x = fraction of total heat input derived from gaseous fossil fuel;

c. y = fraction of total heat input derived from liquid fossil fuel; and

d. z = fraction of total heat input derived from solid fossil fuel;

(d) Span values computed pursuant to paragraph (c) of this subsection for burning combinations of fuels shall be rounded to the nearest 500 ppm; and

(e) The source shall submit the proposed CEMS span value for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection, for all affected facilities[all IHEs] that simultaneously burn fossil fuel and nonfossil fuel [for cabinet approval pursuant to 40 C.F.R. 60.13(d) and this subsection].

(4) For continuous monitoring systems installed pursuant to subsection (1) of this section, the following conversion procedures shall be used to convert the continuous monitoring data into units

of the applicable requirement in nanograms/joule (ng/J) or lb/MMBTU[lb/million-BTU]:

(a) For continuous monitoring systems measuring oxygen, the pollutant concentration and oxygen concentration shall be measured on a consistent wet or dry basis as follows:

1. Procedures approved by the cabinet and the U. S. EPA pursuant to 40 C.F.R. Part 60, Appendix B, shall be used for wet-basis measurements; and

2. For dry-basis measurements, the following conversion procedure shall be used:

$E = (20.9CF)/(20.9 - \text{percent oxygen})$ [20.9CF divided by (20.9 minus percent oxygen)] in which E, C, F, and percent oxygen shall be determined pursuant to subsection (5) of this section; and

(b) For continuous monitoring systems measuring carbon dioxide, the pollutant concentration and carbon dioxide concentration shall be measured on a consistent wet or dry basis and the following conversion procedure shall be used: $E = (100 CF_c)/(\text{percent carbon dioxide})$, in which E, C, Fc, and percent carbon dioxide shall be determined pursuant to subsection (5) of this section.

(5) The values used in the equations in subsection (4)(a) and (b) of this section shall be derived as follows:

(a) E = pollutant emissions in grams per million calorie (g/MMCal) or lb/MMBTU[g/million-calorie (cal) (lb/million-BTU)];

(b) C = pollutant concentration in grams per dry cubic meter at standard conditions (g/dscm) or pounds per dry cubic feet at standard conditions (lb/dscf) [g/dscm (lb/dscf)] determined by multiplying the average concentration (ppm) for each one (1) hour period by 0.000415 M (g/dscm)/ppm or (lb/dscf)/ppm [g/dscm per ppm]; multiplied by two and five-tenths (2.5) multiplied by ten (10) raised to the negative ninth[nine] (9) power; and multiplied by M (g/dscm)/ppm or (lb/dscf)/ppm [(lb/dscf per ppm)] in which M equals:

1. Pollutant molecular weight in grams per gram-mole (g/g-mole) or pounds/pound-mole (lb/lb-mole) [g/g-mole (lb/lb-mole)]; or

2. 64.07 for sulfur dioxide and 46.01 for nitrogen oxides;

(c) F, Fc = a factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), and a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted (Fc), respectively, pursuant to the applicable American Society for Testing and Materials (ASTM) standard from the Book of ASTM Standards [incorporated by reference in 401-KAR-50:045] as follows:

1. For anthracite coal as classified according to ASTM D388-66(72), F equals 10,140 dscf/MMBTU[dscf/million-BTU] and Fc equals 1980 standard cubic feet (scf) CO₂/MMBTU[CO₂/million-BTU];

2. For subbituminous and bituminous coal as classified according to ASTM D388-66(72), F equals 9820 dscf/MMBTU[dscf/million-BTU] and Fc equals 1810 scf CO₂/MMBTU[CO₂/million-BTU];

3. For liquid fossil fuels including crude, residual, and distillate oils, F equals 9220 dscf/MMBTU[dscf/million-BTU] and Fc equals 1430 scf CO₂/MMBTU[CO₂/million-BTU];

4a. For gaseous fossil fuels, F equals 8740 dscf/MMBTU[dscf/million-BTU];

b. For natural gas, [propane and butane fuels,] Fc equals 1040 scf CO₂/MMBTU; for propane, Fc equals [CO₂/million-BTU for natural gas,] 1200 scf CO₂/MMBTU[CO₂/million-BTU] for propane, and 1260 scf CO₂/MMBTU[CO₂/million-BTU for butane];

5a. For bark, F equals 9575 dscf/MMBTU[dscf/million-BTU] and Fc equals 1927 scf CO₂/MMBTU[CO₂/million-BTU];

b. For wood residue other than bark, F equals 9233 dscf/MMBTU[dscf/million-BTU] and Fc equals 1842 scf CO₂/MMBTU[CO₂/million-BTU]; and

6. For lignite coal as classified according to ASTM D388-66(72), F equals 9900 dscf/MMBTU[dscf/million-BTU] and Fc equals 1920 scf CO₂/MMBTU[CO₂/million-BTU];

(d) The source[owner or operator] may use the equation given in subparagraph 1 of this paragraph to determine an F factor (dscm/MMCal, or dscf/MMBTU[(dscm/million-cal, or dscf/million-BTU)] on a dry basis or Fc factor (standard cubic meters (scm) CO₂/MMCal, or standard cubic feet (scf) CO₂/MMBTU[(scm CO₂/million-cal, or scf CO₂/million-BTU)] on either wet or dry basis in lieu of the F or Fc factors specified in paragraph (c) of this subsection; where

1. The F or Fc Factor shall be determined by the following:

- $F = \{227.2 (\%H) + 95.5 (\%C) + 35.6 (\%S) + 8.7 (\%N) - 28.7 (\%O)\} / \text{GCV (metric units)}$;
- $F = 10^6 \{3.64 (\%H) + 1.53 (\%C) + 0.57 (\%S) + 0.14 (\%N) - 0.46 (\%O)\} / \text{GVC (English units)}$;
- $F_c = \{2.0 \times 10^{-5} (\%C)\} / \text{GCV (metric units)}$; and
- $F_c = \{3.21 \times 10^{-5} (\%C)\} / \text{GVC (English units)}$;

2. H, C, S, N, and O shall be content by weight of hydrogen, carbon, sulfur, nitrogen, and oxygen (expressed as percent), respectively, as determined on the same basis as GCV by ultimate analysis of the fuel fired using ASTM method D3178-73 or D3176-74 (solid fuels) or computed from results using ASTM methods D1137-53(75), D1945-64(73), or D1946-67(72) (gaseous fuels) as applicable; and

3. GCV shall be the gross calorific value (Cal/g or BTU/lb)[cal/g, BTU/lb] of the fuel combusted determined by ASTM test methods D2015-66(72) for solid fuels and D1826-64(70) for gaseous fuels as applicable; and

(e) For an affected facility firing a combination [IHEs firing combinations] of fuels, the F or Fc factors determined by paragraphs (c) and (d) of this subsection shall be prorated in accordance with the applicable formula as follows:

- $F = xF_1 + yF_2 + zF_3$, where:
 - x, y, z = the fraction of total heat input derived from gaseous, liquid, and solid fuels [fuel], respectively; and
 - F_1, F_2, F_3 = the value of F for gaseous, liquid, and solid fuels, respectively, pursuant to subsection (5)(c) and (d) of this section; or
- where:

$$F_c = \sum_{i=1}^n X_i (F_c)_i$$
 - X_i = fraction of total heat input derived from each type fuel; and
 - $(F_c)_i$ = applicable Fc factor for each fuel type determined pursuant to subsection (5)(c) and (d) of this section.

(6) For reports required pursuant to 401 KAR 59:005, Section 3(3), periods of excess emissions required to be reported shall be as follows:

- Excess emissions shall be any six (6) minute period during which the average opacity of emissions exceeds twenty (20) percent opacity, except that one (1) six (6) minute average per hour of up to twenty-seven (27) percent opacity shall not be required to be reported;
- For sulfur dioxide, excess emissions shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed an applicable standard in Section 5 of this administrative regulation; and
- For nitrogen oxides, excess emissions ~~[for IHEs using a continuous monitoring system for measuring nitrogen oxides]~~ shall be any three (3) hour period during which the average emissions (arithmetic average of three (3) contiguous one (1) hour periods) of nitrogen oxides as measured by a continuous monitoring system exceed an applicable standard in Section 6 of this administrative regulation.

(7) The source may request approval, ~~[in writing to the cabinet,]~~ to install a Particulate Matter Continuous Emissions Monitoring System (PM CEMS) as an alternative ~~to~~ in lieu of the requirement of subsection (1)(a) of this section ~~[for a COMS]~~ as follows:

- The request for approval shall be made in writing to the cabinet;
- if the PM CEMS request is approved, the source:
 - Shall be subject to a federally enforceable PM limit of 0.030 lb/MMBTU/hr or less;
 - Shall comply with 40 C.F.R. 60.42Da(a) and 60.43Da(a); and
 - Shall follow the applicable compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da; and
- Excess emissions for an affected facility [IHE] using PM CEMS shall be determined by a boiler-operating-day, as defined by 40 C.F.R. 60.41, in which the average emissions (arithmetic average of all operating one (1) hour periods) exceed the applicable standard pursuant to 40 C.F.R. 60.42; and

(b) The source shall follow the applicable compliance and monitoring provisions of 40 C.F.R. 60.48Da and 60.49Da.]

Section 8. Test Methods and Procedures. (1) Except as provided in 401 KAR 50:045, the reference methods specified in 40 C.F.R. Part 60, Appendix A - Test Methods, shall be used to determine compliance with Sections 4, 5, and 6 of this administrative regulation as follows:

- Reference Method 1 shall be used for the selection of sampling site and sample traverses;
- Reference Method 3 shall be used for gas analysis in applying Reference Methods 5, 6, and 7;
- Reference Method 5 shall be used for concentration of particulate matter and the associated moisture content;
- Reference Method 6 shall be used for the concentration of sulfur dioxide;
- Reference Method 7 shall be used for the concentration of nitrogen oxides; and
- Reference Method 9 shall be used for visible emissions.

(2) For Reference Method 5:

- Reference Method 1 shall be used to select the sampling site and the number of traverse sampling points;
- The sampling time for each run shall be at least sixty (60) minutes, and the minimum sampling volume shall be 0.85 dscm (thirty (30) dscf) except smaller sampling times or volumes, if necessitated by process variables or other factors, may be requested by the source; and
- The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature not greater than 160 degrees Centigrade (320 degrees Fahrenheit).

(3) For Reference Methods 6 and 7:

- The sampling site shall be the same as the site selected for Reference Method 5;
- The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than one (1) meter (3.28 ft); and
- For Reference Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.

(4) For Reference Method 6:

- The minimum sampling time shall be twenty (20) minutes, and the minimum sampling volume shall be 0.02 dscm (0.71 dscf) for each sample;
- The arithmetic mean of two (2) samples shall constitute one (1) run; and
- Samples shall be taken at approximately thirty (30) minute intervals.

(5) For Reference Method 7:

- Each run shall consist of at least four (4) grab samples taken at approximately fifteen (15) minute intervals; and
- The arithmetic mean of the samples shall constitute the run value.

(6) For each run using the methods specified by subsection (1)(a), (b), and (c) of this section, the emissions expressed in g/MMCal (lb/MMBTU)[g/million cal (lb/million BTU)] shall be determined by the following procedure:

$$E = \frac{20.9CF}{(20.9 - \text{percent oxygen})} [20.9 - CF \text{ divided by } 20.9 \text{ minus percent oxygen}], \text{ in which:}$$

- E = pollutant emission, g/MMCal (lb/MMBTU)[g/million cal (lb/million BTU)];
- C = pollutant concentration, g/dscm (lb/dscf), determined by Reference Methods 5, 6, or 7;
- Percent oxygen:
 - Shall equal oxygen content by volume (expressed as percent), dry basis; and
 - Shall be determined using the integrated or grab sampling and analysis procedures of Reference Method 3:
 - For determination of sulfur dioxide and nitrogen oxides emissions, the oxygen sample shall be obtained simultaneously at the same point in the duct as used to obtain the samples for Reference Methods 6 and 7 determinations, respectively, with the oxygen sample for reference Method 7 obtained using the grab sampling and analysis procedures of Reference Method 3; and;
 - For determination of particulate emissions, the oxygen sample shall be obtained simultaneously by traversing the duct at the

same sampling location used for each run of Reference Method 5 pursuant to subsection (2) of this section, using Reference Method 1 for selection of the number of traverse points except that not more than twelve (12) points shall be required; and ~~[e. Reference Method 1 shall be used for selection of the number of traverse points except that not more than twelve (12) sample points shall be required; and]~~

(d) F = a factor as determined in Section 7(5) of this administrative regulation.

(7) If an affected facility fires a combination of fossil fuels ~~[are fired]~~, the heat input, expressed in Cal/hr (BTU/hr)~~[cal/hr (BTU/hr)]~~, shall be determined during each testing period by multiplying the gross calorific value of each fuel fired by the rate of each fuel burned, in which:

(a) Gross calorific value shall be determined in accordance with ASTM methods D2015-66(72) (solid fuels), D240-76 (liquid fuels), or D1826-64(70) (gaseous fuels) as applicable; and

(b) The rate of fuels burned during each testing period shall be determined by the applicable method and shall be confirmed by a material balance over the steam generation system.

LEONARD K. PETERS, Secretary

APPROVED BY AGENCY: May 7, 2010

FILED WITH LRC: May 12, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held June 29, 2010, at 10 a.m. (local time) at the Division for Air Quality, Conference Room 201B, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2010. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Millie Ellis, Internal Policy Analyst III, Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, fax (502) 564-4666, e-mail millie.ellis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Millie Ellis, Environmental Technologist III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards of performance for new indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour.

(b) The necessity of this administrative regulation: This administrative regulation regulates indirect heat exchangers as part of the Kentucky State Implementation Plan (SIP).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) requires the Energy and Environment Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions of specific pollutants of concern from new indirect heat exchangers with heat input capacity between one (1) million and 250 million BTU heat input per hour or more that are not subject to a standard for each pollutant under a federal New Source Performance Standard (NSPS) as required under the Kentucky SIP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation regulates indirect heat exchangers as required under the Kentucky SIP.

(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 adds clarifying language to Section 3(3), which allows the use of an alternative method for determining allowable emission rate at the source. The language at Section 7(7), which provides for approval of the alternative monitoring system, PM CEMS, to be available to regulated entities for monitoring emissions from indirect heat exchangers, is also corrected and clarified to ensure the U.S. EPA's approval of this revision to the Kentucky State Implementation Plan (SIP). The amendment also restores the reference to "affected facilities" throughout the administrative regulation, which was inadvertently changed in the previous amendment.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend this administrative regulation to clarify the provision in Section 7(7), which allows the use of particulate matter continuous emissions monitoring (PM-CEMS) so that use of this alternative will be approvable as a revision to the Kentucky SIP. While this is the only substantive amendment being proposed, existing regulatory language has been further amended to clarify provisions in Section 3 and to restore references to "affected facilities".

(c) How the amendment conforms to the content of the authorizing statutes: The administrative regulation, as amended, conforms to KRS Chapter 224 in that it provides the same test method alternatives that are allowed under the federal regulation, 40 C.F.R. Part 60, Subpart D.

(d) How the amendment will assist in the effective administration of statutes: The administrative regulation, as amended, will provide sources with additional reference methods that are approved by the cabinet and the U.S. EPA.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation will continue to apply to indirect heat exchangers with heat input capacity between 1 million and 250 million BTU heat input per hour or more.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: While owners or operators of indirect heat exchangers subject to this administrative regulation will continue to be required to monitor the emissions from these units and to maintain the units so that emissions are within permitted limits, the amendment results in no new requirements for sources. Instead, the amendment provides additional U.S. EPA-approved flexibility to sources for demonstrating compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no added costs resulting from this amendment, but rather, the amendment will result in cost savings to regulated sources.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, sources will have greater flexibility in choosing reference methods for monitoring emissions and demonstrating compliance for the opacity standard.

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

(a) Initially: There are no additional costs associated with this amendment.

(b) On a continuing basis: While there are no new costs associated with the amendment to this administrative regulation, continuing costs are included in the Division for Air Quality's normal day-to-day operating budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new revenue is required because the funding for this program has been included in the Division for Air Quality's operating budget.

(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 increase in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Consistent with the federal regulation for indirect heat exchangers, this administrative regulation is tiered by heat input capacity size and by the variations in fuels used.

FISCAL NOTE ON STATE AND 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. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation has the potential to affect any unit, part or division of state or local government operating an emissions unit that meets the applicability determination of Section 2 of this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5); 42 U.S.C. 7401-7671q; 40 C.F.R. Part 60; and 40 C.F.R. 52.920(c) authorize the action taken by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The administrative regulation will generate no new revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation will generate no new revenue.

(c) How much will it cost to administer this program for the first year? Costs are already included in the Division for Air Quality's normal day-to-day operating budget.

(d) How much will it cost to administer this program for subsequent years? Continuing costs will be included in the Division for Air Quality's normal day-to-day operating budget.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

FEDERAL MANDATE ANALYSIS

(1) Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is in 40 C.F.R. 52.920(c) and 40 C.F.R. Part 60.

(2) State compliance standards. The state compliance standards are found in KRS 224.10-100(5).

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate consists of the approval of this administrative regulation to the Kentucky SIP. It requires any source with an affected facility described in Section 2 of this administrative regulation to meet the specified standards for particulate matter, sulfur dioxide, and nitrogen oxides. It also requires monitoring, reporting, and the use of specific reference methods.

(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 is not more stringent than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter standards or additional or different responsibilities or requirements.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Mine Permits (Amendment)

405 KAR 8:010. General provisions for permits.

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

STATUTORY AUTHORITY: KRS [Chapter 350] 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 470 et seq., 661 et seq., 66A, 703 et seq., 1513 et seq., 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require [Chapter 350 in pertinent part requires] the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation provides for permits to conduct these operations. The administrative regulation specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, [and] sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

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

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

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

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

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

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

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

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

(3) Compliance with permits. Any person engaging in surface coal mining and reclamation operations under a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet, and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

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

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

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

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

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

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

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

(c) The following forms~~[, which]~~ are required to be submitted by an applicant ~~[applicants, are hereby incorporated by reference]~~:

1. Preliminary Application, MPA-00, 11/91;
2. Permittee Information for a Mining Permit, MPA-01, 11/91;
3. Operator Information for a Mining Permit, MPA-02, 11/91;
4. Technical Information for a Mining Permit, MPA-03, 11/91;
5. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B, 11/91;
6. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.C, 11/91;
7. Application to Revise a Mining Plan, MPA-04, 11/91;

8. Update of Permittee or Operator Information, MPA-05, 11/91;

9. Change of Corporate Owners, Officers or Directors, MPA-06, 11/91;

10. Application to Transfer a Mining Permit, MPA-07, 11/91;

11. Revision Application to Change Operator, MPA-08, 11/91;

12. Application for Renewal of a Mining Permit, MPA-09, 11/91;

13. Application for a Coal Marketing Deferment, MPA-10, 11/91; and

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

(d) ~~[These forms may be reviewed or obtained at the Department for Natural Resources, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

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

(2) Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

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

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

(b) Dates of the collection and analyses; and

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

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

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

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

(6) General requirements for maps and plans.

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

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

23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified [registered] professional engineer, as defined in KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340 [Chapter 322], and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with applications shall be prepared by or under the direction of a qualified [registered] professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 [Chapter 322] and 405 KAR 7:040, Section 10.

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

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

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

(2) An applicant shall submit an application fee of \$2,500 for an original application or \$1,750 for an amendment.

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

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

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

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

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

(2)(a) The first advertisement shall be published on or after:

1. The date the application is submitted to the cabinet; or

2. ~~[- The applicant may elect to begin publication on or after]~~

The date the applicant receives the notification from the cabinet under Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review. (b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's

receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

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

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

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in subsection (5) of this section ~~[by the cabinet]~~.

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

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

(b) A map or description which shall:

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

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

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

4. Show the north arrow and map scale, if a map is used; ~~show the north arrow and map scale, if a map is used~~].

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

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

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except when public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

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

(g) The application number.

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

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

(b) The application number;

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

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

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

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; ~~[- but not limited to, planning agencies and sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the pro-~~

posed operations or having water sources or collection, treatment, or distribution facilities located in these areas;] and

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

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

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

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a)[~~.]~~ Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and[~~;~~ and shall]

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

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

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

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

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

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

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

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

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

(a) Briefly summarize the issues to be raised by the person requesting [requester] at the conference;

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

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

(2) [Except as provided in subsection (3) of this section,] If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted according to the following:

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

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

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

(d) The requirements of 405 KAR 7:091 and 405 KAR 7:092 shall not apply to the conduct of the conference. The conference shall be conducted by a representative of the cabinet, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties. The record shall be maintained and [shall be] accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

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

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

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

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur. The application will be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884. This copy need not include confidential information exempt from disclosure under subsections (2) and (3) of this section.

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

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

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

(3) Confidentiality. The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information. Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application. If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 405 KAR 7:092, Section 9. Confidential information shall be limited to the following:

(a) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except infor-

mation on components of the coal which are potentially toxic in the environment;

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

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

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

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

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

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

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

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

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

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350

and administrative regulations adopted pursuant thereto, or any other state's laws or administrative regulations under SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation. [Based on available information concerning failure-to-abate cessation orders issued by OSM, Kentucky, or any other state; unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state; delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, or any other state's laws or administrative regulations under SMCRA; bond forfeitures by OSM, Kentucky, or any other state where violations upon which the forfeitures were based have not been corrected; delinquent abandoned mine reclamation fees; and unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the cabinet shall not issue the permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and administrative regulations adopted pursuant thereto, any other state's laws or administrative regulations under SMCRA, or any other law, rule, or administrative regulation referred to in this subsection.]

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and regulations under SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except when evidence to the contrary is set forth in the permit application, or when the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

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

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

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

(e) ~~[(e)]~~ If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and administrative regulations adopted pursuant thereto of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 405 KAR 7:092, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new

information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

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

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

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

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

(4) The proposed permit area is:

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

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

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

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

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

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

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

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

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

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

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;[-]

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

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

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR

8:040, Section 25, and the applicable performance standards of 405 KAR Chapters 16 and 18;[-]

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

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

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

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

(15) The cabinet has made all specific approvals required under 405 KAR Chapters 16 through 20;[-]

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The applicant;
- (b) Each person who files comments or objections to the permit application;
- (c) Each party to an informal permit conference, if held;
- (d) The county judge-executive of the county, and the chief executive officer of any municipality, in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and
- (e) The field office director of the Division of Mine ~~[Office of Surface Mining]~~ Reclamation and Enforcement.

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

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

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

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

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

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

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

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

- 1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or
- 2. There are conditions beyond the control and without the fault or negligence of the permittee.

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

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

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

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

(1) General. The following general conditions apply to permits issued by the cabinet:

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

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

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

(2) Right of entry.

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

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

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

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

(3) Environment, public health, and safety.

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

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

2. Immediate implementation of measures necessary to comply; and

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

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

(c) The permittee shall conduct its operations:

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

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

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

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted under the permit or after an order for cessation and immediate compliance is issued under 405 KAR 12:020, Section 3, for operations conducted under the permit, except when a stay of the order is granted and remains in effect, the permittee shall either ~~submit to the cabinet the following information, current to the date the order was issued, or~~ notify the cabinet in writing that there has been no change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

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

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

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

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

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

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

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 405 KAR 7:092, Section 8.

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

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

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

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

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

(2) Major revisions.

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

1. Changes in the postmining land use;
2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;
3. Variances to approximate original contour requirements;

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

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

6. Proposed experimental practices;

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

8. Incidental boundary revisions that affect new watersheds; and

9. Incidental boundary revisions that include diversions of perennial streams.

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

(3) Minor revisions.

(a) All revisions which are not determined by the cabinet under subsection (2) of this section to be major revisions, or which are not operator change revisions under subsection (6) of this section, shall be deemed minor revisions. Minor revisions shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that minor field revisions described in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal. Minor revisions shall be submitted on MPA-04, Application to Revise a Mining Plan ~~[forms prescribed by the cabinet]~~.

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

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

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

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

a. There are no structures or renewable resource lands (under paragraph (b) of the definition of "renewable resource lands") overlying the area;

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

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

2. Proposals for retention of concrete platforms and small buildings if:

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

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

3. Proposals to leave the following roads as permanent:

a. Excess spoil fill roads;

b. Coal mine waste roads;

c. Roads to air shafts;

d. Roads within 100 feet of an intermittent stream or perennial stream; and

e. Roads within areas designated unsuitable for mining under 405 KAR 24:040, Section 2, regardless of whether a previous waiver or approval has been granted.

f. Roads to impoundments shall not be considered minor field revisions.

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

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

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

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

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

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

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

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

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

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

8. Proposals for relocation of topsoil storage areas if:

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

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

9. Proposals to substitute plant species if:

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

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

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

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

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

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

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

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

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

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

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

16. Proposals to add a portable coal crusher if:

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

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

c. The operation will not generate coal mine waste;

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

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

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

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

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

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

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

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

21. Proposals to add a hopper to a permitted area if:

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

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

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

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

24. Proposals for incidental boundary revisions for minor off-permit disturbances if:

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

b. The cumulative acreage limitation in subsection (5) of this section is not exceeded;

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

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

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

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

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

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

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

- a. The structure has a hazard classification of B or C;
- b. The impoundment is a developed water resource land use;
- c. The removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;
- d. The impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland where no other nearby source of water is available to the livestock); or
- e. The impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values.

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

- a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;
- b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;
- c. The disturbed area is one (1) acre or less;
- d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes and establishment of a quick growing temporary vegetative cover;
- e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and
- f. The application contains a MRP map certified by a [registered] professional engineer showing the location of the disturbed area and the drainage area clearly.

27. Proposals to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

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

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

1. Do not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;
2. Are contiguous to the current permit area;
3. Are within the same watershed as the current permit area;
4. Are required for an orderly continuation of the mining operation;

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

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

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

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

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

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

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

(5) Size limitations for incidental boundary revisions.

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

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

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

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

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

(6) Operator change revisions.

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

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

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

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

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

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

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

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

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised ~~[at least once]~~ in the newspaper of largest bona fide circulation, according to the definition in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located. The advertisement shall be entitled "Notice of Intention to Mine" and shall be of a form specified in Section 8(5) of this administrative regulation. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

1. The permit number;
2. The geographic location of the permit area;
3. The name and business address of the permittee;
4. A statement that the permittee proposes to change the operator approved in the permit;
5. The names and business addresses of the currently approved operator and the proposed operator;
6. The cabinet address to which written comments may be sent under paragraph (g) of this subsection; and
7. The time available for submission of the comments. ~~[by the cabinet. The advertisement shall include, at a minimum, the permit number, the geographic location of the permit area, the name and business address of the permittee, a statement that the permittee proposes to change the operator approved in the permit, the names and business addresses of the currently approved operator and the proposed operator, the cabinet address to which written comments may be sent under paragraph (g) of this subsection and the time available for submission of the comments. A copy of the advertisement and proof of publication acceptable to the cabinet shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication.]~~

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

(g) The cabinet shall ~~[may]~~ approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator under the criteria in Section 13(4) of this administrative regulation; and
2. Meets any other requirements specified by the cabinet in order to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

~~(h)1. [For a complete and accurate application,]The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period under paragraph (f) of this subsection.~~

~~2. [-except that] Periods of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 [KAR] prevent a decision from being made within the time period specified in this paragraph, then the cabinet shall have additional time, but not to exceed twenty (20) days from the completion of the notice, to issue its decision[-but not to exceed twenty (20) days from the completion of the notice,] hearing and conference procedures.~~

(7) Fees. Applications for revisions shall include a basic fee ~~[of \$375;]~~ except that minor field revisions and operator change revisions shall have no basic fee.

(a) The fee for a revision shall be \$1,750 for a major revision and \$750 for a minor revision.

(b) If the revision application proposes incidental boundary revisions which would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application.[-except that] No acreage fee shall be required for surface areas overlying underground workings which will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for renewal. Any valid, existing permit issued pursuant to this chapter

shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. Applications for renewal of permits shall be submitted within the time prescribed by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, [in a form and with content as required by the cabinet] and in accordance with this section, and shall include [at a minimum]:

- (a) The name and address of the permittee, the term of the renewal requested and the permit number;
- (b) A copy of the proposed newspaper notice and proof of publication of same under Section 8 of this administrative regulation;
- (c) Evidence that liability insurance under 405 KAR 10:030, Section 4, will be provided by the applicant for the proposed period of renewal;
- (d) A renewal fee of \$750 [\$375];
- (e) Evidence that the performance bond will continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and
- (f) Any additional revised or updated information which may be required by the cabinet.

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

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

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

(6) Approval or denial of renewal applications.

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

1. The terms and conditions of the existing permit are not being satisfactorily met;
2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under KRS Chapter 350 and 405 KAR Chapters 7 through 24;
3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;
4. The applicant has not provided evidence that any performance bond required for the operations will continue in effect for the proposed period of renewal, as well as any additional bond the cabinet might require pursuant to 405 KAR Chapter 10;
5. Any additional revised or updated information required by the cabinet has not been provided by the applicant; or
6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

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

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

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

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

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

- (a) Provide a complete and accurate application, on forms provided by the cabinet, for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the

existing holder of permit rights and the applicant for succession. Additionally, the following information shall be provided:

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

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

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

4. A processing fee of \$750 ~~[\$375]~~.

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

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

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

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

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

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

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

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

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

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

(7) Rights of successor. All rights and liabilities under the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under KRS 350.130(3).

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

(9) Release of bond liability. The cabinet may release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability under KAR Title 405 for the reclamation of the areas affected by all prior~~filed a performance bond satisfactory to the cabinet, has received written approval of the cabinet for the transfer, sale or assignment of rights, has submitted proof of execution of the agreement, and has assumed all liability under 405 KAR for reclamation of the areas affected by all prior~~ permittees.

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

(2) A fee for an amendments to existing permits shall be submitted to the cabinet as indicated in Section 7(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee or any person with an interest which ~~[is or]~~ may be adversely affected may request a hearing on the reasons for the final decision in accordance with 405 KAR 7:092, Section 8.

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

(a) Have the right to judicial review as provided in KRS ~~350.0301 and 350.0305~~ ~~[224.085]~~ if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

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

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

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

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

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

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

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

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

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

(3) Remedial measures. If the cabinet, under subsection (2) of this section, finds that because of an unabated violation or a delin-

quent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

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

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

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

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

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

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

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

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

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

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

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

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing under 405 KAR 7:092, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, November 1991;

(b) "Permittee Information for a Mining Permit", MPA-01, November 1991;

(c) "Operator Information for a Mining Permit", MPA-02, November 1991;

(d) "Technical Information for a Mining Permit", MPA-03, November 1991;

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Application to Revise a Mining Plan, MPA-04, November 1991;

(h) "Update of Permittee or Operator Information", MPA-05, November 1991;

(i) "Change of Corporate Owners, Officers or Directors", MPA-06, November 1991;

(j) "Application to Transfer a Mining Permit", MPA-07, November 1991;

(k) "Revision Application to Change Operator", MPA-08, November 1991;

(l) "Application for Renewal of a Mining Permit", MPA-09, November 1991;

(m) "Application for a Coal Marketing Deferment", MPA-10, November 1991;

(n) "Minor Field Revision Application Form", SME 80, revised September 1991; and

(o) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

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

LEONARD K. PETERS, Secretary

APPROVED: April 15, 2010

FILED WITH LRC: April 20, 2010 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2010 at 10 a.m. (Eastern Time) at Conference Room D-16 of the Department for Natural Resources at #2 Hudson Hollow, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 15, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business June 30, 2010. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, Office of the Commissioner, 2 Hudson Hollow Road, Frankfort, Kentucky 40601, phone (502) 564-6940, fax (502) 564-6764, email Michael.Mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins, Regulations Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation applies to surface coal mining operations and specifies when permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits. This administrative regulation also applies to reclamation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to entities interested in the coal permitting process in the Commonwealth of Kentucky. This includes those items listed in question (1)(a).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 350.028 and 350.465 requires the cabinet to promulgate rules and administrative regulations pertaining to permits for surface coal mining and reclamation operations. The permitting process is detailed in this administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information to entities interested in a surface coal mining permit as well as information relating to amendments and timelines for those entities that currently have a surface coal mining permit.

(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 increases fees for permitting actions to match legislation passed in the 2010 GA. This amendment also incorporates by reference Ram #124 and allows it to be introduced as a minor field revision.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to increase the fee amounts in regulation to match those passed in HB 283 2010 GA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment will introduce the changes to permit fee increases as well as changing a portion of the permitting process by allowing Ram #144 to be an acceptable minor field revision.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide appropriate updates required by statute as well as introducing more detail to the permitting process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact surface mines throughout the Commonwealth of Kentucky. There are 415 coal companies in the Commonwealth with inspectable permits. In Fiscal Year 2009 there were 1,187 permitting actions to which these assessments would have been applicable. The 10-year average is 1,012

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for a new permit, amendment, major revision, minor revision, renewal, or transfer will be required to pay additional fees matching the amounts indicated in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is difficult to provide a set cost associated with all entities in the Commonwealth. However, the amounts will be increased to the following amounts:

\$2,500 for an original application;

\$1,750 for an amendment or major revision;

\$750 for a minor revision, renewal or transfer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The increased funding will allow the Division of Mine Permits to hire and retain additional permit reviewers that will increase the rate of permit review. Also the entities listed in question 3 will also be able to introduce RAM #124 as a minor field revision.

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

(a) Initially: There will be no costs associated with introduction of new permit fees. However, hiring new employees will result from the increased fee amounts.

(b) On a continuing basis: The costs associated with this amendment on a continuing basis will be related to retaining the permit reviewers hired with the increased fee amounts.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of this administrative regulation will be General Fund and 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: This administrative regulation does increase fees to the amounts listed in question (4)(b).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does increase the fees originally contained within this administrative regulation.

(9) TIERING: Is tiering applied? Yes. Tiering was applied by setting different fee amounts depending on the amount of review required for each permitting action.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Division of Mine Permits will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 283 2010 GA amended KRS 350.060, 350.070, 350.135, and 350.139.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation will increase the revenue for the Division of Mine Permits assuming associated General Fund appropriations are maintained at current levels.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation could generate approximately \$800,000 dollars per year depending on the number of permit applications received.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation could generate approximately \$800,000 dollars per year on a continuing basis depending on the number of permit applications received.

(c) How much will it cost to administer this program for the first year? The costs associated with this administrative regulation will be the result of hiring additional permit reviewers.

(d) How much will it cost to administer this program for subsequent years? The costs associated with this administrative regulation in subsequent years will be related to retaining those permit reviewers hired as a result of the increased permit fees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Revenue will increase by approximately \$800,000 annually depending on the number of permit applications received.

Expenditures (+/-): The expenditures will be related to the employees hired as a result of the amendment to this administrative regulation. The costs associated with hiring new personnel is roughly calculated at \$480, 100 in fiscal year 2010 and 994,400 in fiscal year 2011. Half of this cost will be made up in a 50% federal match.

Other Explanation: NA

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 C.F. R. Part 730

2. State Compliance Standards. KRS 350.060, 350.062, 350.070, and 350.135.

3. Minimum or uniform standards contained in the federal mandate. 30 C.F.R. 773-775, 777, and 778.17

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. Yes. This administrative regulation charges a fee for permits review. The federal laws do not include a permit fee.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The Commonwealth of Kentucky was given the authority to charge fees for permit review by KRS 350.060, 350.070, and 350.135.

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)

VOLUME 36, NUMBER 12 – JUNE 1, 2010

STATUTORY AUTHORITY: KRS 15A.070(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. KRS 15A.070(5) authorizes the commissioner of the Department of Criminal Justice Training to promulgate administrative regulations. 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, [Uniforms and] Operator's License, and Criminal History Records Check required.

(1) A recruit shall:

(a) Provide the uniforms required in Section 6(8) of this administrative regulation; and

(b) Present a valid motor vehicle operator's license to participate in the basic training course.

(2) The recruit's employing agency shall submit a letter to the department that:

(a) A criminal history check, in accordance with the requirements of 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days of the recruit attending law enforcement basic training; and

(b) The recruit is not prohibited by state or federal law from:

1. Possessing a firearm; or

2. Accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(3) If the recruit has been in precertified status, pursuant to KRS 15.386(1), for less than ninety (90) days before arriving for law enforcement basic training, an additional criminal records check shall not be required of the employing agency.

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, including the criminal history letter required in Section 1(2) of this administrative regulation;

(b) Is not presently 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 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 shall not reapply for admission to the department's basic training course for two (2) 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 in Sections 6 and 7 of this administrative regulation 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 in Sections 6 and 7 of this administrative regulation shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit. The department shall give written notice to a recruit of any penalty imposed upon him.

(4) 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 of 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 be clean and neat 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 if the recruit is granted permission to stay beyond the normal Friday evening checkout. "Attending a basic training course" shall not include the weekend period 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 alcoholic 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 percent or greater. 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 a qualified medical professional 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 a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional. 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-possessioned 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, on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and 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-possessioned 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 unreturned or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Depending on the nature of the conduct, the recruit shall be penalized by a verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion. Additionally, the appropriate prosecutorial authority shall be notified of the activity if it constitutes a felony or class A misdemeanor, and may be notified of other activity 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 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. The location of the policies and rules shall be provided to each recruit at the beginning of basic training. ~~A copy of the policies and rules shall be given to each recruit at the beginning of the course.~~ Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them as required by the department. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(b) Navy blue utility uniforms shall be:

1. Clean, pressed and in good condition;

2. Appropriately sized to fit the recruit and not excessively loose, baggy, or tight;

3. Worn over a clean white 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.

1. The recruit may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

2. Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Optional clothing may be worn during a training activity if authorized by the class coordinator.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for ten (10) minutes or more.

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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 recruit is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the class coordinator and class administrative specialist. Failure to make up the work shall be deemed a failure of 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 possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A recruit shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training staff. Penalty: verbal warning or written reprimand.

(d)[(e)] 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.

(e)[(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" thirty (30) minutes past the designated curfew[~~by 11:30 p.m.~~]. This time may be temporarily moved up or extended by the branch manager or designee based upon training or testing activities the following day. [~~Notification of any time change shall be given to each recruit in writing.~~] 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) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(f) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(g) 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 class coordinator. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(2) The coordinator 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 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 representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at six (6) 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 if a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.
- (6) Notice if a recruit has been removed from training pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or if 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) If 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 or his or her designee receives a complaint of or witnesses apparent misconduct, he or she 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 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; and

2. Explain to the recruit:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 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 accordance with KRS Chapter 13B.

VOLUME 36, NUMBER 12 – JUNE 1, 2010

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2010 at 9 a.m. in Room 211, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by June 15, 2010, five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2010. 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: Steve Lynn, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training law enforcement basic training course.

(b) The necessity of this administrative regulation: This administrative regulation 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 Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable, and consistent conduct requirements, procedures, and penalties for all who attend law enforcement basic training.

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

(a) How the amendment will change this existing administrative regulation: This amendment does the following:

1. Requires that employing agencies conduct a criminal history check within 90 days before a recruit attends law enforcement basic training;

2. Prohibits the possession of cell phones and other electronic devices during training hours without permission of the class coordinator; and

3. Changes the time that "lights out" is observed.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update language regarding criminal history checks, possession of electronic devices, and the "lights out" policy.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment amends language in the DOCJT disciplinary requirements in order to improve and better reflect academy practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth

that utilize DOCJT basic training, which is approximately 400 agencies, including most state, county and local agencies, but excluding the Kentucky State Police, and the Lexington-Fayette Urban County Government Division of Police, and the Louisville Metro Police Department.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Other than conducting a criminal records check within 90 days of attending basic training, the agencies should not have to take any actions. These amendments relate only to rules for students in basic training.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained officer upon graduation.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation 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 regulation, if new, or by the change, if it is an amendment: No increase should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect city and county police departments, sheriffs offices, Kentucky Vehicle Enforcement Officers and other state agencies whose enforcement officers must be a certified police officer. New city, county, and state law enforcement are required to attend law enforcement basic training and abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), 15.330(1)(a) and (h).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the Department of Criminal Justice Training and negligible costs to the employing agencies of basic training recruits. Agencies are already required by KRS 15.382 to have a background investigation and criminal history check.

(d) How much will it cost to administer this program for subsequent years? No additional costs over that which the Department of Criminal Justice Training currently spends to administer the law enforcement basic training program. The amendments to this administrative regulation are relatively minor and should have no additional fiscal impact.

Note: 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: Please see answers to 4(c) and (d) above.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(Amendment)**

503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.530-15.590

STATUTORY AUTHORITY: KRS 15.590, 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 requires the Commissioner of the Department of Criminal Justice Training to promulgate necessary administrative regulations for the administration of telecommunications training, in-service training and practices. This administrative regulation prescribes conduct requirements of trainees attending the telecommunications academy conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms and Criminal History Records Check required. (1) A trainee shall wear a uniform, approved by the department, while participating in the telecommunications academy.

(2) The required uniform shall consist of:

(a) Men:

1. [Gray] Polo shirt with DOCJT logo, supplied by the department;
2. Solid black dress pants with belt loops. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black socks above the ankles; and
5. Black, plain-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(b) Women:

1. [Gray] Polo shirt with DOCJT logo, supplied by the department;
2. Solid black dress pants with belt loops or knee-length skirt. Cargo pants or low-cut pants shall not be worn;
3. Black belt;
4. Black socks or hose above the ankles; and
5. Black, plain, closed-toe, dress shoes. Athletic shoes shall not be worn with the uniform.

(3) The following may be worn with the uniform:

- (a) Dress jacket or sport coat, solid gray or dark blue is recommended;
- (b) [Pins issued by the trainee's agency; and
- (c)] The Department of Criminal Justice Training cap [which shall be issued to the trainee on the first day of the academy].

(4) The trainee's employing agency shall submit a letter to the department that:

(a) A criminal history check, in accordance with the requirements of 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days of the trainee attending the Tele-

communications Academy; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(5) If the criminal history check required by KRS 15.540(1)(c) has been performed within ninety (90) days before the trainee arrives for the Telecommunications Academy, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If a trainee does not meet the law enforcement telecommunicator qualifications in KRS 15.540, he shall:

(a) Be removed from the academy by the:

1. Director;
2. Branch manager; or
3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except where required by law, a trainee's training file shall not be available for access except by:

1. The department;
2. The trainee; or
3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If

the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the telecommunications academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

(b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;

2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and

3. Shall not wear a beard unless he receives permission from the department, based upon:

a. A written request from the trainee's agency; and

b. A showing of good cause.

(b) A trainee's hair, male or female, shall:

1. Not be unkempt; and

2. Be kept above the collar.

(c) A trainee shall:

1. Practice good hygiene at all times; and

2. Not wear excess perfume, cologne, or other scented body products.

(d) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while enrolled in a telecommunications academy. Penalty: written reprimand, loss of privileges, suspension or expulsion.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the 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 or a qualified medical professional. Penalty: verbal warning, written reprimand 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. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) A trainee shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, knives (except an ordinary pocketknife), or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, 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 academy 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 or written reprimand.]~~

(e)] Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not 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, suspension or expulsion.

(b) A trainee shall not have successfully completed the telecommunications academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the telecommunications academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(8) Academy activities - uniforms.

(a) A trainee shall wear the uniform required by Section 1 of this administrative. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be clean, pressed and in good condition. Penalty: verbal warning or written reprimand.

(c) A name tag, provided by the department, shall be worn on the left shirt breast. Penalty: verbal warning or written reprimand.

(d) Sleeves on long-sleeved shirts shall not be rolled up. Penalty: verbal warning or written reprimand.

(e) Additional clothing may be worn during an academy activity if authorized by the instructor.

(9) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty: verbal warning or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the telecommunications academy shall be approved by the section supervisor or branch manager.

(d) ~~If a trainee's absence is excused, [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 academy area.~~

(10) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee

shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(11) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into a academy activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(d)[(e)] A trainee shall not engage in conduct which creates or may create a risk of injury to others during a training session.

(12) Academy activities - dishonesty. A trainee shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(13) Residence hall.

(a) During the telecommunications academy[~~when attending in Madison County,~~] a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of hot plates is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets or animals[~~animals, or birds~~] of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The trainee shall abide by the provisions of the honor code which reads as follows:

We are a dynamic team of individuals who possess a wide array of 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 trainees of the Department of Criminal Justice Training, Telecommunications Academy, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature

or[~~of~~] 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 public safety[~~the police service~~]. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - public safety[~~law enforcement~~].

(2) The penalty for violating the honor code shall be: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(3) The instructional staff[~~class~~] shall select[~~elect~~] an honor code representative and a class leader during the first week of the academy.

(4) All trainees shall report honor code violations to the honor code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(5) All disciplinary procedures contained in this administrative regulation shall apply to the honor code violation. The department may pursue separately any additional offenses discovered during the investigation of the honor code violation.

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the telecommunications academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the trainee's agency:

(1) Trainee performance report which shall be completed at the completion of the academy[~~four (4) week intervals~~] and shall include trainee conduct, demonstrated leadership abilities, examination scores, [physical fitness scores] and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking an agency-owned or assigned[~~a marked police~~] vehicle [~~parked~~] 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.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members shall have the authority to impose the specified penalties 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 believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the

trainee with the opportunity to give an explanation.

Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy 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 for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence;

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee the possible

answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing. A notice of administrative hearing as required by KRS 13B.050 shall be served on the trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2010 at 9 a.m. in Room 211, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by June 15, 2010, five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2010. 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: Steve Lynn, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training Telecommunications Academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear conduct requirements for telecommunications trainees and to establish the procedures and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation

sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend the Telecommunications Academy.

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

(a) How the amendment will change this existing administrative regulation: This amendment does the following:

1. Requires that employing agencies conduct a criminal history check within 90 days before a trainee attends the Telecommunications Academy;

2. Prohibits the possession of cell phones and other electronic devices during training hours without permission of the class coordinator;

3. Amends the dress code for the academy; and 4. Makes other minor amendments to the language of the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update language regarding criminal history checks and possession of electronic devices.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment amends language in the DOCJT disciplinary requirements in order to improve and better reflect academy practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All law enforcement agencies in the Commonwealth that employ law enforcement telecommunications.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Other than conducting a criminal records check within 90 days of attending the Telecommunications Academy, the agencies should not have to take any actions. These amendments relate only to rules for trainees in the Telecommunications Academy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained officer upon graduation.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation 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 regulation, if new, or by the change, if it is an amendment: No increase should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect city, county, and state agencies that employ law enforcement telecommunications. New city, county, and state telecommunications are required to attend the Telecommunications Academy and abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), 15.330(1)(a) and (h).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the Department of Criminal Justice Training and negligible costs to the employing agencies of Telecommunications Academy trainees. Agencies are already required by KRS 15.540(1)(c) to have a background investigation and criminal history check.

(d) How much will it cost to administer this program for subsequent years? No additional costs over that which the Department of Criminal Justice Training currently spends to administer the telecommunications training program. The amendments to this administrative regulation are relatively minor and should have no additional fiscal impact.

Note: 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: Please see answers to 4(c) and (d) above.

JUSTICE AND PUBLIC SAFETY CABINET Department of Criminal Justice Training (Amendment)

503 KAR 3:110. Certified Court Security Officers academy trainee requirements; misconduct; penalties; discipline procedures.

RELATES TO: KRS 15.380(1)(c), 15.3975

STATUTORY AUTHORITY: KRS 15.3975(1), 15A.070(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070(1) requires the Commissioner of the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel and KRS 15A.070(5) authorizes the commissioner to promulgate administrative regulations. This administrative regulation prescribes conduct requirements of trainees attending the Certified Court Security Officers academy conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties for violations.

Section 1. Uniforms and Criminal History Records Check required. (1) A trainee shall acquire and wear the designated uniform of his or her employing agency while participating in the academy. If an agency has not adopted a uniform, male trainees shall wear a shirt and tie and female trainees shall wear business casual for women. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(2) A uniform shall be:

- (a) Clean, pressed, and in good condition;
- (b) Appropriately sized to fit the trainee and not excessively loose, baggy, or tight;
- (c) Worn over a clean white or department-issued tee-shirt, visible at the neck; and

(d) Worn with a wide black police-type belt, clean police-type footwear, brown or black socks, and when outdoors, a department cap.

(e) The penalty for violation of this subsection shall be a verbal warning or written reprimand.

(3) Jewelry.

(a) The trainee may wear one (1) ring per hand. A wedding and engagement ring worn together shall be considered one (1) ring.

(b) Necklaces, earrings, bracelets, and other jewelry shall not be worn unless authorized by the coordinator.

(c) The penalty for violation of this subsection shall be a verbal warning or written reprimand.

(4) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(5) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(6) Optional clothing may be worn during a training activity if authorized by the class coordinator or an instructor.

(7) The trainee's employing agency shall submit a letter to the department that:

(a) A criminal history check, in accordance with the requirements of 503 KAR 1:140, Section 4(1)(f) and (2), has been conducted within ninety (90) days of the trainee attending the Academy for Certified Court Security Officers; and

(b) The trainee is not prohibited by state or federal law from accessing the Criminal Justice Information System (CJIS) or any other restricted records database.

(8) If the criminal history check required by KRS 15.540(1)(c) has been performed within ninety (90) days before the trainee arrives for the academy, an additional criminal records check shall not be required of the employing agency.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. If the Department discovers that a trainee does not meet the Certified Court Security Officer qualifications in KRS 15.3971, he shall:

(a) Be removed from the academy by the:

- 1. Director;
- 2. Branch manager; or
- 3. Section supervisor; and

(b) Not receive credit for completed portions of academy training.

(2) If a trainee is removed from the academy he may request an administrative hearing, conducted in accordance with the requirements of KRS Chapter 13B, within thirty (30) days of the removal. The request for an administrative hearing shall be in writing.

(3) Agency request. The department shall remove a trainee from the academy upon written request of the trainee's law enforcement agency. The trainee shall not receive credit for completed portions of academy training.

Section 3. Gifts. A gift from trainees to department staff shall conform with the requirements of KRS Chapter 11A, the executive branch code of ethics.

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for

violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee has received a penalty for violating a conduct or honor code requirement, upon a second violation of any conduct or honor code requirement the next higher penalty shall be added to the list of penalties that may be imposed for the second violation.

(b) If a trainee has previously received two (2) penalties for violating two (2) conduct or honor code requirements, upon a third or subsequent violation of any conduct or honor code requirement the next two (2) higher penalties shall be added to the list of penalties that may be imposed for the third or subsequent violation.

(3) Notice of disciplinary action to trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee has been charged with a violation of a conduct or honor code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of a penalty imposed on a trainee by placing it in the trainee's file.

(b) Except where required by law, a trainee's training file shall not be available for access except by:

- 1. The department;
- 2. The trainee; or
- 3. The trainee's agency head.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A trainee attending the academy shall meet the following conduct requirements:

(1) General conduct - chain of command. All communications shall follow the chain of command of the department. Exceptions are the unavailability of a supervisor, or the trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning or written reprimand, loss of privileges, probation, or suspension.

(b) Refrain from:

- 1. Engaging in sexual activity on Department property;
- 2. Physical contact with another person that is inappropriate in a professional training setting, for example, hugging or kissing;

3. Vulgarity;

4. Sexual harassment;

5. Rudeness;

6. Confrontation; and

7. Other disrespectful conduct directed toward a department staff member, trainee or other department trainee or guest.

8 Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(3) General conduct - grooming.

(a) A male trainee:

1. Shall be clean shaven with sideburns no longer than the bottom of the ear lobe;

2. May wear a mustache if he had it upon arrival and keeps it neatly trimmed; and

3. Shall not wear a beard unless he receives permission from the department, based upon:

a. A written request from the trainee's agency; and

b. A showing of good cause.

(b) A trainee's hair shall:

1. Not be unkempt; and

2. Be kept above the collar.

(c) Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxi-

cants.

(a) Regardless of amount, a trainee shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician or a qualified medical professional while attending a basic training course which shall include all dates of training and periods when residing in the dormitory, including the weekend if the trainee is granted permission to stay beyond the normal Friday evening checkout.

(b) "Attending a basic training course" shall not include the weekend period during which trainees check out of the dormitory and return to their homes.

(c) A trainee shall not report to the dormitory having consumed alcoholic beverages, controlled substances, or other intoxicating substances.

(d) A trainee shall submit to testing as requested by the department to determine the presence of alcoholic beverages, or controlled or other intoxicating substances at the department's expense.

(e) 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 trainee has violated the provisions of this section.

(f) Testing may be randomly requested of all members of an academy class or all dormitory residents. If a test is requested, a trainee shall be considered to have consumed alcoholic beverages if his or her blood alcohol concentration is 0.01 percent or greater.

(g) If a trainee has taken a controlled substance as prescribed by a physician or a qualified medical professional or has taken any other medication, whether prescribed or not, he shall not participate in any academy activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the class coordinator or the section supervisor in writing of the use of a controlled substance or medication whether or not it has been prescribed by a physician or a qualified medical professional.

(h) Confiscation.

(i) Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessioned intoxicating substance, he shall immediately confiscate it.

2. A confiscated item shall be stored in a secure facility of the department until the item is returned to the trainee at the completion of the academy, or disposed of by the department.

(5) General conduct - weapons and other dangerous devices.

(a) Due to the accidents that have occurred in the training setting in other jurisdictions, a trainee shall not possess the following on property used by the department except under circumstances specifically authorized by the department:

1. Deadly weapons as defined in KRS 500.080;
2. Ammunition;
3. Destructive devices as defined in KRS 237.030;
4. Booby trap devices as defined in KRS 237.030;
5. Hazardous substances as defined in KRS 224.01-512;
6. Fireworks; or
7. Instruments used by law enforcement for control purposes,

such as batons, stun guns, Mace, and pepper spray.

(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 academy activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs that 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.

(c) Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(d) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director, or commissioner observes a weapon or other dangerous device possessed in violation of this

subsection, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct - department property.

(a) A trainee shall not 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 trainee shall not have successfully completed the academy, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct - conduct unbecoming a trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor, or violation, while enrolled in the academy. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(b) Engage in conduct that creates a danger or risk of danger to the trainee or another;

(c) Possess obscene material as defined in KRS 531.010;

(d) Engage in conduct that is annoying;

(e) Engage in fighting or in violent, tumultuous, or threatening conduct;

(f) Engage in sexual harassment; or

(g) Engage in conduct that is offensive. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

(8) Academy activities - absences.

(a) A trainee shall be considered absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee shall be considered tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee shall give advance notice of an absence if possible. Penalty for unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension. Penalty for unexcused tardiness: verbal reprimand or written reprimand.

(b) An absence shall be excused if the trainee was absent due to:

1. Illness;
2. Illness of an immediate family member;
3. Death of an immediate family member;
4. Necessity of trainee's agency; or
5. Emergency circumstances.

(c) An absence from the academy shall be approved by the section supervisor or branch manager.

(d) 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 academy area.

(e) If a trainee is absent for a combined period of more than ten (10) percent of the academy, he or she may be required to return to a later class in order to complete all coursework.

(10) Academy activities - breaks. Trainees shall be allowed a ten (10) minute break per hour of instruction if possible. A trainee shall not take a break in an area restricted by the department. Penalty: verbal warning or written reprimand.

(11) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not possess any electronic devices during scheduled training hours unless written permission is granted by the class coordinator. Electronic devices shall include cellular telephones, mp3-type audio players, cameras, and recording devices. Penalty: verbal warning or written reprimand.

(c) A trainee shall not use tobacco products during, or bring food or drink into an academy activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(d)[(e)] A trainee shall not engage in conduct that creates or may create a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(12) Academy activities - dishonesty. A trainee shall not cheat

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or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: suspension or expulsion.

(13) Residence hall.

(a) During the academy, when attending in Madison County, a trainee shall reside in the residence hall designated by the department.

(b) A trainee shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) A trainee shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand or loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning, written reprimand or loss of privileges.

(f) A hot plate shall not be used in the residence hall. Penalty: verbal warning, written reprimand or loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation, and rule violations.

(h) A trainee residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning, written reprimand, or loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, or loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code. ~~[(4)]~~ The trainee shall abide by the provisions of the honor code which reads as follows: We are a dynamic team of individuals who possess a wide array of 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 trainees of the Department of Criminal Justice Training, Certified Court Security Officers Academy, we will not lie, steal or cheat nor tolerate any among us who do. We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature 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 class shall elect an honor code representative during the first week of the academy.~~

~~[(3)] All trainees 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.~~

Section 8. Department's Responsibilities to Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the certified court security officers academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the sheriff of the trainee's agency:

~~(1) [A trainee performance report which shall be completed at the end of the first week and shall include trainee conduct, demonstrated leadership abilities, examination scores, and overall effort on performance, observed social/interpersonal skills, and appearance.~~

~~(2)] Immediate notice of specific nonperformance, misconduct, or lack of progress.~~

~~(2)] [(3)] Immediate notice of any off-campus activity that 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.~~

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a trainee unless charges have first been brought by the legal officer.

(1) The following department staff members shall have the authority to impose the specified penalties 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 believe by a preponderance of the evidence that the trainee has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the trainee the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the trainee with the opportunity to give an explanation.

Section 10. Removal from the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy 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 for believing that a trainee has violated a conduct or honor code requirement identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

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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 trainee.

1. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated.

2. All pertinent evidence and documents including the complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File any charges against the trainee that he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges.

(4) If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(5) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the trainee of the nature of the allegation;

(c) State the time, date, and place the trainee shall make an initial appearance before the commissioner to answer the charges.

(d) Be signed by the legal officer; and

(e) Be served upon the trainee at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the trainee; and

2. Explain to the trainee:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel.

(b) The legal officer shall explain to the trainee that he shall answer the charges by:

1. Admitting the charges are true;

2. Denying the charges are true but waiving a hearing; or

3. Denying the charges are true and requesting a hearing.

(c) The commissioner shall advise the trainee of the penalty that shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee chooses to waive his rights and admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the trainee denies the charges and requests a hearing, or refuses to answer the charges, the commissioner shall set a date for the hearing, notice of which shall be provided in writing to the trainee.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be

dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

JOHN W. BIZZACK, Ph.D., Commissioner

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2010 at 9 a.m. in Room 211, Department of Criminal Justice Training, Funderburk Building, Kit Carson Drive, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by June 15, 2010, five work-days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2010. 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: Steve Lynn, Assistant General Counsel, Justice and Public Safety Cabinet, Office of Legal Services, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475, phone (859) 622-3073.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen D. Lynn

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the conduct requirements, procedures, and penalties for those attending the Department of Criminal Justice Training Certified Court Security Officers Academy.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish clear conduct requirements for Court Security Officer trainees and to establish the procedures and penalties for those who violate the conduct requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 15A.070(1) requires the Department of Criminal Justice Training to establish, supervise, and coordinate training programs and schools for law enforcement personnel.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets clear, reasonable and consistent conduct requirements, procedures, and penalties for all who attend the Certified Court Security Officers Academy.

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

(a) How the amendment will change this existing administrative regulation: This amendment does the following:

1. Requires that employing agencies conduct a criminal history check within 90 days before a trainee attends the Certified Court Security Officers; and

2. Prohibits the possession of cell phones and other electronic devices during training hours without permission of the class coordinator.

(b) The necessity of the amendment to this administrative regulation: These amendments are necessary to update language regarding criminal history checks and possession of electronic devices.

(c) How the amendment conforms to the content of the authorizing statutes: Please see the response contained in (1)(c) above.

(d) How the amendment will assist in the effective administration

tion of the statutes: This amendment amends language in the DOCJT disciplinary requirements in order to improve and better reflect academy practices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 120 sheriffs' offices in Kentucky that employ Certified Court Security Officers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Other than conducting a criminal records check within 90 days of attending the Certified Court Security Officers Academy, the agencies should not have to take any actions. These amendments relate only to rules for trainees in the Certified Court Security Officers Academy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with the amendments should not cost anything more than what it costs presently.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will receive a better trained officer upon graduation.

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

(a) Initially: No additional costs.

(b) On a continuing basis: No additional costs.

(6) What is the source of funding to be used for the implementation 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 regulation, if new, or by the change, if it is an amendment: No increase should be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(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 program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect county sheriffs' offices that employ Certified Court Security Officers. New court security officers are required to attend the Certified Court Security Officers Academy and abide by all disciplinary rules.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.070(1), 15.330(1)(a) and (h).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation gen-

erate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There should be no additional costs to the Department of Criminal Justice Training and negligible costs to the sheriffs' offices. Agencies are already required by KRS 15.3971(1)(e) and (k) to have a background investigation and criminal history check.

(d) How much will it cost to administer this program for subsequent years? No additional costs over that which the Department of Criminal Justice Training currently spends to administer the Certified Court Security Officers. The amendments to this administrative regulation are relatively minor and should have no additional fiscal impact.

Note: 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: Please see answers to 4(c) and 4(d) above.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (Amendment)

601 KAR 2:020. Drivers' privacy protection.

RELATES TO: KRS 61.874, 61.878(5), 186.018, 187.310, 411.402, 411.406, 15 U.S.C. 1231-1233, 18 U.S.C. 2721, 42 U.S.C. 7401-7459, 49 U.S.C. 31301-31317

STATUTORY AUTHORITY: KRS 187.300(1), 187.310(1), 18 U.S.C. 2721

NECESSITY, FUNCTION, AND CONFORMITY: KRS 187.300(1) authorizes[requires] the cabinet to promulgate administrative regulations to implement KRS Chapter 187. KRS 187.310(1) requires the cabinet to furnish, upon request, an abstract of the operating record of a person subject to KRS 187.290 to 187.620. 18 U.S.C. 2721 authorizes[mandates] the information that shall and shall not[which can and cannot] be included in information sold or otherwise distributed about a motor vehicle operator or owner[motor vehicle operators or owners]. This administrative regulation establishes the circumstances and conditions governing the distribution or sale of motor vehicle operator or owner personal information.

Section 1. Definition. "Personal information" means information that identifies an individual including the following:

- (1) Name;
- (2) Address, excluding the zip code;
- (3) Social Security number;
- (4) Date of birth;
- (5) Driver identification number;
- (6) Telephone number;
- (7) Photograph; and
- (8) Medical or disability information.

Section 2. ~~[A person's driver's license photo or computerized image, Social Security number, or medical or disability information from a motor vehicle record, driver's license or permit, motor vehicle registration, or identification document shall not be disseminated except for:~~

~~(1) Use by a government agency including a court or law enforcement agency in carrying out its functions or a private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;~~

~~(2) Use in connection with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency or before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;~~

~~(3) Use by an insurer or insurance support organization, or by a self-insured entity, or its agents, employee, or contractor, in con-~~

nection with claims investigation activities, antifraud activities, rating, or underwriting; or

(4) Use by employer, or its agents or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 through 31317.

Section 3. (1) In the Driver Licensing Computer Information System, the following shall not be considered personal information:

- (a) Driver status; and
- (b) Violation or conviction of a traffic law.

(2) The information included in the Driver Licensing Computer System shall not be distributed or sold except as established in [contrary to] KRS 187.310.

Section 3.4. Required Disclosures. (1) Personal information referred to in Section 1 or 2 of this administrative regulation shall be disclosed in accordance with subsection (2) of this section for use in connection with:

- (a) Matters of motor vehicle or driver safety and theft;
- (b) Motor vehicle emissions;
- (c) Motor vehicle product alterations, recalls, or advisories;
- (d) Performance monitoring of motor vehicles or [and] dealers by motor vehicle manufacturers; or
- (e) Removal of nonowner records from the original owner records of motor vehicle manufacturers.

(2) The disclosure of personal [this] information shall be to carry out the provisions of the:

- (a) Federal Automobile Information Disclosure Act, 15 U.S.C. 1231-1233; or
- (b) [et seq.;
- (b) Motor Vehicle Information and Cost Saving Act, 15 U.S.C. 1901 et seq.;
- (c) National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1381 et seq.;
- (d) Anticar Theft Act of 1992, 15 U.S.C. 2021 et seq.;
- (e) Clean Air Act, 42 U.S.C. 7401-7459 [et seq., as amended; and

(f) All statutes and agency administrative regulations enacted or adopted pursuant to the authority of, or to attain compliance with, the federal Acts listed in paragraphs (a) through (e) of this subsection].

Section 4.5. Personal information in the Driver Licensing Computer Information System or the Automated Vehicle Information System [including a computerized image, Social Security number, medical or disability information from a motor vehicle record, motor vehicle registration, or personal information relating to the owner of a boat, shall not be released except for the following reasons:

(1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;

(2) For use in connection with matters relating to the following:

- (a) Motor vehicle or driver safety;
- (b) Motor vehicle theft;
- (c) [Motor vehicle emissions;
- (d) Motor vehicle product alterations, recalls, or advisories;
- (d) [(e)] Performance monitoring of motor vehicles, motor vehicle parts, or dealers;

(e) [or

(f) Removal of nonowner records from the original owner records of motor vehicle manufacturers; or

(f) Theft of motor fuel as established in KRS 411.402 and 411.406.

(3) For use in the normal course of business by a legitimate business or its agent, employee, or contractor, but only:

(a) To verify the accuracy of personal information submitted by the individual to the business or its agent, employee, or contractor; or

(b) If the submitted information is not correct or is no longer correct, to obtain the correct information, in order to prevent fraud

by pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in connection with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency or before a self-regulatory body, including the service of process; [.] investigation in anticipation of litigation; or [.] and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(5) If the personal information is not published, redisclosed, or used to contact an individual, for use in:

- (a) Research activities; or
- (b) Producing statistical reports;

(6) For use by an insurer or insurance support organization [.] or by a self-insured entity [.] or its agent, employee, or contractor, in connection with claims investigation activities, antifraud activities, rating, or underwriting;

(7) For use in providing notice to the owner of a towed or impounded vehicle;

(8) For use by a licensed investigative agency or licensed security service for a purpose permitted under this section;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 through 31317; or

(10) For use in connection with operation of a private toll transportation facility.

Section 5.6. Disclosure with Consent. Personal information referred to in Sections 1 and 4[2] of this administrative regulation shall [may] be disclosed to a [any] requestor that [if the requestor] provides a notarized written statement of consent [that has been notarized,] from the person whose [who is the subject of the] information is [being] requested.

Section 6.7. A person wishing pursuant to Section 4[5] of this administrative regulation to obtain a record for a commercial purpose that [which] includes personal information, shall submit [complete] one (1) of the following forms or its preapproved electronic equivalent and three (3) dollars for each requested record:

(1) If the record is in the Driver Licensing Computer Information System [:

(a) [Transportation Cabinet form TC 94-1E[94-1], "Request for Driver Licensing Record(s) that [which] Includes Personal Information"; or

[(b) Transportation Cabinet form TC 10-300, "Agreement Relating to Driver Licensing, Motor Vehicle or Boat Records"; or]

(2) If the record is in the Automated Vehicle Information System [:

(a) [Transportation Cabinet form TC 96-16A[96-16], "Request for Motor Vehicle or Boat Record that [which] Includes Personal Information"; or

(b) [Transportation Cabinet form TC 10-300, "Agreement Relating to Driver Licensing, Motor Vehicle or Boat Records".]

Section 7.8. Retention of Records. A form completed pursuant to Section 6[7] of this administrative regulation shall be retained by the agency or office providing the record containing personal information for a minimum of two (2) years.

Section 8.9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [Transportation Cabinet form TC 94-1] "Request for Driver Licensing Record that [Record(s) which] Includes Personal Information", TC Form 94-1E, January 2010 [effective July 1998];

(b) [Transportation Cabinet form TC 96-16] "Request for Motor Vehicle or Boat Record that [which] Includes Personal Information" TC Form 96-16A, April 2010 [effective July 1998; and

(c) Transportation Cabinet form TC 10-300, "Agreement Relating to Driver Licensing, Motor Vehicle or Boat Records" effective July 2000].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Registration, 200 Mero Street,

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Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [from the following offices within the Transportation Cabinet, Monday through Friday, 8 a.m. to 4:30 p.m.:]

(a) TC 96-16 from the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, 501 High Street, Frankfort, Kentucky 40622;

(b) TC 94-1 from the Department of Vehicle Regulation, Division of Driver Licensing, 501 High Street, Frankfort, Kentucky 40622; and

(c) TC 10-300 from the Department of Administrative Services, 501 High Street, Frankfort, Kentucky 40622.]

MIKE HANCOCK, Acting Secretary

APPROVED BY AGENCY: May 6, 2010

FILED WITH LRC: May 12, 2010 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 22, 2010 at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days 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 working days 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 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 wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2010. 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: D. Ann Dangelo, Asst. General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ann DAngelo

(1) Provide a brief summary of

(a) What this administrative regulation does: This administrative regulation establishes the circumstances and procedures governing the distribution of personal information by the cabinet and sets forth the procedures for obtaining personal information from the cabinet.

(b) The necessity of this administrative regulation: KRS 187.300(1) requires the cabinet to furnish upon request an abstract of the operating record of a person. KRS Chapter 187 also requires the cabinet to promulgate administrative regulations to implement the procedures to request and obtain the personal information.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the circumstances and conditions governing the distribution or sale of personal information.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation currently is used to govern the dissemination of personal information by the 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: The amendment updates the regulation including the address of the cabinet and forms used in the process of obtaining records.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because the address of the Transportation Cabinet has changed, and forms used in the process of obtaining personal information have changed or become obsolete.

(c) How the amendment conforms to the content of the authorizing statutes: The correct information and forms are necessary to carry out the statutory mandate of KRS 187.310.

(d) How the amendment will assist in the effective administration of the statutes: The updated information will better assist the public in requesting records.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All vehicle operators and owners in Kentucky are potentially affected. The Department of Vehicle Regulation and the Division of Driver Licensing within the cabinet.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Vehicle owners and operators will know the current forms available to obtain personal records and will have the new business address of the cabinet. Other entities listed should not be impacted by the amendment.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To obtain a record that includes personal information, a person or entity will submit Form TC 94-1E, a Division of Driver Licensing form, or Form TC 96-16A, a Motor Vehicle Licensing form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Pursuant to KRS 186.018, the cabinet charges a fee of \$3 for any driving history record with the submission of TC Form 94-1E. The charge for obtaining records from the Division of Motor Vehicle Licensing by using TC Form 96-16A will also be \$3 per request.

(c) As a result of compliance, what benefits will accrue to the entities identified in questions (3): They will be able to obtain the requested records that include personal information.

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

(a) Initially: No implementation costs.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road 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: There will not be a need to increase fees or funding.

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

(9) TIERING: Is tiering applied? No. All individuals or entities who request records and submit a fee with the correct form should be able to obtain the requested records.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Transportation Cabinet's Division of Driver Licensing and Division of Motor Vehicle Licensing. The Open Records Custodian for the Transportation Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 187.300, 18 U.S.C. 2721.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues. This is an amendment to update the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be

no effect on expenditures and revenues. This is an amendment to update the regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no effect on expenditures and revenues.

(c) How much will it cost to administer this program for the first year? There will not be any costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There will not be any costs associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+-)
Expenditures (+-)
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(Amendment)

910 KAR 1:240. Certification of assisted-living communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793, 2010 Ky Acts Ch. 36

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification process for assisted-living communities.

Section 1. Definitions. (1) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(2) "Activities of daily living" is defined by KRS 194A.700(1).

(3) "Assisted-living community" is defined by KRS 194A.700(4)(3).

(4) "Client", "Resident", or "tenant" is defined by KRS 194A.700(5)(4).

(5) "Certification review" means the process of reviewing applications and issuing certification for an assisted-living community.

(6) "Client's designated representative" means a person identified in a document signed and dated by the client or client's guardian or attorney-in-fact identifying a representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

(7) "Danger" is defined by KRS 194A.700(6)(5).

(8)(7) "Functional needs assessment" means the client data required by KRS 194A.705(5)(a) and (b).

(9)[194A.713(1)(a) to be in a lease agreement.

(8) "Instrumental activities of daily living" is defined by 194A.700(7).

(10) "Licensed healthcare professional" is defined by KRS 216.300(1).

(11) "Living unit" is defined by KRS 194A.700(10).

(12) "Plan of correction" is defined by KRS 194A.700(12).

(13) "Statement of danger" is defined by KRS 194A.700(13).

(14) "Statement of noncompliance" is defined by KRS 194A.700(14).

(15)(9) "Living unit" is defined by KRS 194A.700(8).

(10) "Temporary [health] condition" means a condition that affects a client as follows: [and for which health services are being provided as referred to in KRS 194A.711; and]

(a) The client loses mobility either before or after entering a lease agreement with the assisted-living community but is ex-

pected to regain mobility within six (6) months of loss of ambulation or mobile nonambulation; is documented by a licensed healthcare professional who is not the owner, manager or employee of the assisted-living community; and the assisted-living community has written plan in place to ensure that the client is not a danger; or

(b)1. The client loses mobility after entering a lease agreement;

2. The client[and] is not expected to regain mobility;

3. Hospice or similar end-of-life services are provided in accordance with KRS 194A.705(2) documented by hospice or a licensed health care professional; and

4. The assisted-living community has a written plan in place to ensure that the client is not a danger[recover and the provided health services are hospice or similar end-of-life services].

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, [within] at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets offered special programming, staffing, or training in accordance with KRS 194A.713(11)[194A.715(4)(c)];

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living units, including features that meet the requirements of KRS 194A.703(1);

2. Central dining area;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(8)(6);

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification becomes effective on a date other than July 1, the certification fee shall be prorated by:

(a) Calculating the fee for a year by computing twenty (20) dollars per living unit or the \$300 minimum set forth in KRS 194A.707(8)(6), whichever is greater, but no more than the \$1,600 maximum set forth in KRS 194A.707(8)(6);

(b) Dividing the yearly fee by twelve (12) to obtain a monthly fee; and

(c) Multiplying the monthly fee by the number of months remaining until the annual renewal on July 1.

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:

(a) Has obtained its initial certification in accordance with Section 5 of this administrative regulation; and

(b) Submits to the department annually by July 1:

1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

2. The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

3. The nonrefundable certification fee required by Section 2(e) of this administrative regulation.

(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a) and (b) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

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(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be twenty (20) dollars per each additional unit prorated in accordance with Section 2(2) of this administrative regulation.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and
(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an announced or unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c) ~~within one (1) year of receipt of the DAIL-ALC-1, Assisted-Living Community Certification Application~~.

Section 7. On-Site Review of an Assisted-Living Community.

(1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

(b) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3); and

b. Applied for within seven (7) days from date of an employee's hire;

3. Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

4. Documentation of:

a. Completion of employee orientation;

(i) Pursuant to KRS 194A.719(1); and

(ii) Within ninety (90) days of the date of hire; and

b. Annual in-service education pursuant to KRS 194.719(2);

(c):

(i) Pursuant to KRS 194A.719; and

(ii) Provided on an annual basis;

(b) Verification of compliance with the applicable building and life safety codes in accordance with KRS 194A.703(3);

(d) (e)] Review of client records including:

1. A completed client functional needs assessment;

a. To ensure that the client met the eligibility requirements for assisted-living pursuant to KRS 194A.705(5); and

b. In which a copy was provided to the client upon move in pursuant to KRS 194A.705(5)(a)] ~~194A.711 prior to finalizing a lease agreement~~];

2. An initial and at least annual[A] functional needs assessment;

a. That reflects a client's [ongoing] ability pursuant to KRS 194A.705(5)] ~~194A.711~~ to perform activities of daily living and instrumental activities of daily living; and

b. In which a copy was provided to the client after move in pursuant to KRS 194A.705(5)(b);

3. Current personal preferences and social factors; ~~and~~

4. A signed lease with all attachments;

5. Documentation of a client's designated representative, if applicable; and

6. Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d);

(e) ~~(d)]~~ Review of an assisted-living community's policies and procedures for compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(f) ~~(e)]~~ Review of an assisted-living community's written service provision and practices related to:

1. Provisions of KRS 194A.705;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

3. Documentation in a client's file:

a. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service ~~pursuant to KRS 194A.741~~;

(i) Requested of the client by the assisted-living community; and

(ii) That states the client has a temporary [health] condition pursuant to KRS 194A.711(1); and

b. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided; and

4. Compliance with KRS 194A.713(11), ~~[194A.745(1)(e)]~~ 194A.719(1)(i) ~~(40)]~~, and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's [ongoing] abilities as specified in paragraph ~~(d)]~~ ~~(e)]~~ 2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216.595; and

~~(g)]~~ ~~(f)]~~ Review of any documentation or records to ensure compliance pursuant to KRS 194A.707 ~~(10)]~~ ~~(7)]~~.

(3) The department may, pursuant to KRS 194A.707 ~~(10)]~~ ~~(7)]~~, request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall hold a meeting with the assisted-living community manager or designee to discuss the preliminary results of the on-site visit.

Section 8. Assisted-living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance with KRS 194A.700 through 194A.729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Non-compliance and Plan of Correction; and

2. Unless the finding is due to a client being a danger pursuant to subsection (9) of this section, within fifteen (15) business days upon completion of the on-site review.

(2)(a) The assisted-living community shall complete a plan of correction on the DAIL-ALC-3, Statement of Non-compliance and Plan of Correction and submit the form to the department within

fifteen (15) business days of receipt of the notice of noncompliance.

(b) The assisted-living community shall specify in the plan the dates by which the noncompliance shall be corrected.

(3) The department shall notify the applicant in writing within fifteen (15) business days of receipt of the plan of correction:

(a) Whether the plan of correction is approved or not approved; and

(b) The reasons for the department's decision.

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate.

(b) The assisted-living community shall post the certificate in a public area.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1. Between the:

a. Department; and

b. The assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 11 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section 7(4) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 9(2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707(10)(7).

Section 9. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 8(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years;

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually;

(d) Fails to implement its most recent approved plan of correction:

1. Under current ownership; and

2. Within the plan of correction's specified timeframe on the DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction;

(e) Fails to comply with one (1) of the following requirements if the department finds that a client is a danger and the department initially verifies those findings in writing pursuant to Section 8(9) of this administrative regulation:

1. Within forty eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall submit a written response to the department that confirms how the danger has been eliminated or why the danger is disputed, with submission occurring via:

a. Email;

b. Facsimile transmission;

c. Delivery to the department by hand;

d. United States mail; or

e. Courier service; or

2. Within forty eight (48), unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall:

a. Initiate a move-out notice and begin the process of assisting the client to find appropriate living arrangements pursuant to KRS 194A.705(4); and

b. Submit a written response to the department that confirms the assisted-living community took the required action, with submission occurring via:

(i) Email;

(ii) Facsimile transmission;

(iii) Delivery to the department by hand;

(iv) United States mail; or

(v) Courier service; or

(f) Except as provided in subsection (3) of this section, fails to initiate the requirements of paragraph (e)2 of this subsection, if the department:

1. Notifies the assisted-living community in writing that the client remains a danger; and

2. Does not accept the assisted-living community's written response pursuant to paragraph (e)1 of this subsection.

(3) If, after reviewing the assisted-living community's written response pursuant to subsection (2)(e)1 of this section, the department determines the client remains a danger, the department shall notify the assisted-living community in writing that:

(a) Certification may be denied or revoked;

(b) The assisted-living community has the right to an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. For the purpose of attempting to resolve a dispute, including the provision of additional documentation or support materials; and

3. To be requested by the assisted-living community in writing within three (3) business days of receiving the department's written notice; and

(c) It has appeal rights pursuant to Section 11 of this administrative regulation if:

1. An informal dispute resolution meeting is not requested; or

2. A dispute is not resolved with the informal dispute resolution meeting.

(4) The department shall issue a written notice to the assisted-living community if the department determines:

(a)1. A danger is unsubstantiated; or

2. The danger has been eliminated; or

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(b) To deny or revoke certification following an informal dispute resolution meeting pursuant to subsection (3)(b) of this section.

(5)(a) If an assisted-living community continues to operate after its certification is revoked and fails to request an informal dispute resolution meeting or an administrative hearing pursuant to Section 11 of this administrative regulation to resolve a danger dispute, the assisted-living community may be fined in accordance with KRS 194A.723(1).

(b) The fine shall be paid as specified in Section 10(1) of this administrative regulation.

Section 10. Collection of Fees and Fines. (1) An entity or business found to be in violation of KRS 194A.723 and pursuant to 2010 Ky Acts Ch. 36, sec. 12 assessed a penalty shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department may appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the notification of conditional compliance to a lender after review of the architectural drawings and lease agreement, pursuant to KRS 194A.729, shall be \$250.

Section 11. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, the applicant shall be notified of the right to appeal the termination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) To request an administrative hearing, an applicant shall send a written request to the department within thirty (30) days of receipt of a written notice of:

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) After receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection 5(b) of this section, not to exceed an additional fifteen (15) days.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1, Assisted-Living Community Certification Application", edition 7/10[14/07];

(b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", edition 7/10[2/09];

(c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of Correction", edition 2/09; and

(d) "DAIL-ALC-4, Statement of Danger, edition 2/09.

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

DEBORAH S. ANDERSON, Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 at 10 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 21, 2010, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, Third Floor, Conference Suite C, 275 East Main Street, Frankfort, Kentucky. Individuals

interested in being heard at this hearing shall notify this agency in writing by June 14, 2010, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business June 30, 2010. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge 564-6930, ext. 3432

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for certification of assisted-living communities.

(b) The necessity of this administrative regulation: KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 194A.050(1) which states the secretary shall promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation provides an initial and annual certification review process for assisted-living communities pursuant to KRS 194.707(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.

(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 clarifies the definition of "Temporary condition"; establishes an annual and biennial certification review process, establishes an assisted-living's record keeping process for abuse, neglect, or exploitation of an adult; provides annual in-service education of assisted-living management and staff; provides staffing to meet a client's 24 hour scheduled needs; and establishes a fine up to \$500 for issuance of two (2) statements of danger within a six (6) month period if not withdrawn by the department. These amendments are in compliance with the HB 444 2010 GA, 2010 Ky Acts Ch. 36, sec. 12.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to be in compliance with the HB 444 2010 GA, 2010 Ky Acts Ch. 36, sec. 12.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the authorizing statute KRS 194A.707(1) which requires the department to establish an initial and annual certification review process. The amendment implements the changes to the certification review process in accordance with HB 444, 2010 GA, 2010 Ky Act Ch.36.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in administering the changes to KRS 194A.700 to 729 during the HB 444, 2010 GA, 201 Ky Acts Ch. 36.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 94 assisted-living communities throughout the state and the Department for Aging and Independent Living affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

The assisted-living communities will:

1. Need to comply with the definition of "Assistance with self-administration of medication" KRS 194A.700(3);
2. Have a written plan in place to ensure a client with a temporary condition of loss of ambulation or mobile non-ambulation is not a danger;
3. Provide to each client upon move in a completed client functional needs assessment and at least annually after move in;
4. Keep on file documentation of a client's representative to administer medication, a copy of cardiopulmonary resuscitation policies provided to the client, documentation of annual in-service education for management and staff; and findings of abuse, neglect and exploitation of an adult;
5. Have staff sufficient in number to meet the client's twenty four (24) hour scheduled needs; and
6. Provide any interested person with copies of KRS 194A.700 to 729 and HB 444, 2010 GA, Sec 12 and 910 KAR 1:240.

The department will:

1. Conduct an announced or unannounced on-site review annually or biennially pursuant to KRS 194A.707(2); and
2. Submit to the Legislative Research Commission and make available to any interested person at no charge, by June 30 of each year all findings from certification reviews conducted during the prior twelve (12) months.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost to assisted-living communities or the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The assisted-living communities will better understand the criteria for certification and the certification review process.

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

(a) Initially: FY 10 - \$201,020.87

(b) On a continuing basis: FY 11 - \$201,020.87 approximately

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted funds from certification fees of \$107,362.24 and additional general funds necessary to operate the program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The fees in this administrative regulation are governed by KRS 194A.707(6).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes certification fees within the provisions found in KRS 194.707(6).

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 194A.707(1).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate approximately \$107,362.24 in certification fees for FY 10. The amendment will not generate additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate approximately \$107,362.24 in certification fees in subsequent years. The amendment, itself, will not generate additional revenue.

(c) How much will it cost to administer this program for the first year? FY 10 - \$201,020.87

(d) How much will it cost to administer this program for subsequent years? Approximately \$201,020.87 for FY 10.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Income Support Child Support Enforcement (Amendment)

921 KAR 1:410. Child support collection and enforcement.

RELATES TO: KRS 13B.010(2), 67A.620, 95.620(1), 95.878, 131.570, 161.700(1), 186.570(2), 205.594, 205.595, 205.710-205.802[205.800], 237.110(4), 403.211-403.215, 405.060(2), (3), 405.405-405.991, [405.430-405.540,] 407.5101-407.5902[5704], 427.120, 427.125, 31 C.F.R. 285.1 and 285.3, 45 C.F.R. 302.32-302.36, 302.60-302.80, 303.3,[302.65,] 303.6, 303.31, 303.32, 303.35, 303.70, 303.72, 303.100-303.102, 303.104, 15 U.S.C. 1673, 42 U.S.C. 652, 654, 659, 666(a)(1)-(4), (6)-(12), (14)-(17); (19), (b), and (c)

STATUTORY AUTHORITY: KRS 15.055(2), 131.570, 186.570(2), 194A.050(1), 205.710-205.802, 403.211-403.215, 405.405-405.991, 407.5101-407.5902[205.712(2)(e), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520,] 42 U.S.C. 652, 653, 654, 656, 659, 666(a), (b), and (c), 669A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. 42 U.S.C. 666 requires states to have laws that prescribe procedures to improve effectiveness of child support enforcement. KRS 205.712(2) requires the Cabinet for Health and Family Services to collect and enforce child support obligations and authorizes the cabinet to promulgate administrative regulations to implement its duties. This administrative regulation establishes procedures for collection and enforcement of child support.

Section 1. Definitions. "Lump sum payment of any kind" means a lump sum payment of earnings as defined in KRS 427.005.

Section 2. Collection. (1) Income withholding shall be used for the collection of a[an assigned] support obligation or health insurance coverage in an order being enforced by the Child Support Enforcement (CSE) program[as defined by 921 KAR 1:004, Section 1(3), (24), and (29)].

(2) The cabinet shall notify an employer or other income source of a request for income withholding by sending, certified mail, returned receipt requested, the[for an assigned support obligation or health insurance coverage within]:

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- (a) CS-89, Income Withholding for Support; and
(b) CS-72, National Medical Support Notice.

1. Within fifteen (15) calendar days of a request for income withholding; or

2. Within [by sending the employer or other income source:

1. CS-89, Income Withholding for Support; and

2. CS-72, National Medical Support Notice; or

(b)] two (2) working days after entry of an obligor into the State Directory of New Hires.

(3) The employer or other income source shall:

(a) Implement income withholding no later than the first pay period that occurs after fourteen (14) working days following the date of the CS-89; and

(b) Transfer the CS-72 to the employer's health plan administrator within twenty (20) business[working] days after receipt of the notice.

(4) The employer or other income source, in accordance with KRS 405.465(4) and (6)(a), may deduct the sum of one (1) dollar for each payment made pursuant to the order.

(5) The total amount to be withheld may not exceed the maximum amount allowed under 15 U.S.C. 1673(b).

(6) In the case of an initial withholding, [In accordance with KRS 405.467(4),] the cabinet shall send the [an] obligor a copy of [CS-164, Notice of Income Withholding, and] the CS-89 in order to notify the obligor that the income withholding:

(a) May be contested by requesting an administrative hearing pursuant to 921 KAR 1:430, in accordance with KRS 405.467(4); and

(b) Shall apply to the current and any subsequent employer.

(7) [(5)] The health plan administrator shall notify the obligor and the cabinet of the health insurance coverage within forty (40) working days of receipt of the CS-72.

(8) [(6)] If an obligor terminates employment, the employer or other income source shall notify the cabinet of the obligor's last known address and name of the new employer, if known, in accordance with [take action pursuant to] KRS 405.465(5).

(9) [(7)] An obligor shall inform the cabinet of any changes in:

(a) [1-] A current employer or source of income; [and]

(b) [2-] Access to health insurance; and

(c) Residential or mailing address.

(10) [(8)] If an obligor transfers or assigns income or income-producing property after receipt of notification of a child support obligation, the cabinet shall take action pursuant to KRS 405.060.

(11) [(9)] If [only] an arrearage only amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by court [judicial] or administrative order.

(12) [(10)] The employer or other income source shall [within seven (7) working days from the date an amount is withheld,] forward:

(a) The [An assigned] support obligation payment to the state disbursement unit in the child support agency within seven (7) working days from the date an amount is withheld; or

(b) The [A] medical insurance premium to the health insurance carrier or notify the cabinet prior to payment if more than one (1) option is available under a plan within twenty (20) business days.

(13) [(11)] The employer or other income source [:

(a)] shall include on the transmittal to the cabinet the obligor's:

(a) [1-] Name;

(b) [2-] Social Security number; and

(c) [3-] Cabinet-assigned identification number.

(14) The employer or other source of income [;

(b) 1-] shall not be required to change payroll frequency but shall withhold;

(a) At least once monthly; and

(b) or

2-] May combine withheld amounts from more than one (1) obligor's income in a single payment to [due] the cabinet [into one (1) payment], if the amount attributable to each obligor is identified by:

1. [a-] Name;

2. [b-] Social Security number; and

3. [c-] Cabinet-assigned identification number.

(15) Lump sum payments to be made to an obligor.

(a) The cabinet requires an employer with twenty (20) or more employees to provide written notification of a lump sum payment of any kind of \$150 or more to be made to an employee who is currently under an income withholding order, in accordance with KRS 405.465.

1. The written notice to the cabinet shall include the following:

a. Name of the employee;

b. Social Security number of the employee;

c. Amount of the lump sum payment; and

d. Intended payment date; and

2. The notice may include multiple employees on one (1) written notification if the information in accordance with this subparagraph is provided for each employee.

(b) Upon receipt of notification of a lump sum payment, Child Support Enforcement shall determine if the employee owes an arrearage on a support obligation enforced by the cabinet.

(c) If the employee owes no arrearage, Child Support Enforcement or its designee may notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to paragraph (b) of this subsection, Child Support Enforcement or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If Child Support Enforcement or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.

(16) If an obligor receives [(12) Withholding-of] unemployment compensation benefits, the cabinet shall [;]

(a) [The cabinet,] Through an agreement with the Education Cabinet, Office of Employment and Training, submit [shall fax] a CS-76, Unemployment Insurance Notice of Withholding, to the Department of Unemployment Insurance within the Education Cabinet to collect a child support payment from an obligor receiving unemployment compensation.

(b) Notify an obligor with [The cabinet shall provide] a CS-73, Unemployment Insurance Letter, along with a copy of the [and] CS-76, Unemployment Insurance Notice of Withholding [to notify an obligor] that:

1. Current child support obligation or delinquency is owed;

2. The cabinet has completed a CS-76 to order withholding of:

a. Fifty (50) percent of the unemployment benefit; or

b. The amount of the assigned support obligation, whichever is less; and

3. The obligor may contest the withholding by requesting an administrative hearing as specified in 921 KAR 1:430.

Section 3. Support Collection by Methods Other than Collection through Income Withholding [2- Enforcement]. (1) Federal income tax refund offset and federal administrative offset.

(a) A public assistance case shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least \$150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case, for which the cabinet is providing services, involving past-due child support, a specific dollar amount of medical support, or spousal support shall qualify for offset if the:

1. Cabinet is enforcing a court-ordered or administratively-established support obligation;

2. Cabinet verifies accuracy of the obligor's name and Social Security number;

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3. Nonpublic assistance arrearage owed is equal to or greater than \$500, exclusive of fees, court costs, or other non-child support debt; and

4. Cabinet has ~~[a copy of]~~ the following:

a. ~~A copy of the~~ current support order; ~~[and]~~

b. ~~A copy of the~~ payment record; ~~and~~

c. ~~The custodial parent's last known address.~~

(c)1. If a case is submitted for federal tax refund offset, the case may be subject to federal administrative offset of nonexempt federal payments pursuant to 42 U.S.C. 664 and 31 C.F.R. 285.1 and 285.3[45 C.F.R. 303.7].

2. Nonexempt federal payments shall be denied to individuals owing a child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(d) An Advance Notice of Intent to Collect Past Due Support, Form CS-122, shall be sent to the obligor of the intent to intercept the tax refund and the administrative offset to be applied to the obligor's account.

1. The notice shall inform noncustodial parents:

a. Of their right to contest the fact that past due support is owed or the amount of past due support by requesting an administrative hearing;

b. Of the procedures and timeframe for contacting CSE to request an administrative hearing;

c. That the hearing shall be conducted by the submitting state unless the noncustodial parent requests the hearing be conducted by the state with the order upon which the referral for offset is based; and

d. That, in the case of a joint return, the Secretary of the U.S. Treasury shall notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse.

(2) State income tax refund offset.

(a) A public assistance case ~~and nonpublic assistance case~~ for past due child support, medical support ordered by specific dollar amount, spousal support, K-TAP, Kinship Care, or foster care child support shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet or the Child Support Enforcement program is providing services involving past due child support, a specific dollar amount of medical support, or spousal support;

3. An arrearage of at least \$150; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) In accordance with KRS 131.570, an advance written notice shall be sent to the obligor that he may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430.:

1. There is an arrearage on a legally-assigned support obligation;

2. The obligor's name and Social Security number are known;

3. The arrearage is verified as accurate; and

4. The amount of the arrearage is at least \$150.

(b) A nonpublic assistance support arrearage shall qualify for offset if the:

1. Case meets the criteria specified in subsection (1)(b)1, 2, and 4 of this section; and

2. Required arrearage amount is not less than \$150.]

(3) Tort claim settlements and state administrative offset. The cabinet shall:

(a) Identify a child support case for state administrative offset, including tort claim settlements, if a child support case meets the criteria specified in subsection (2)(1)(a) or (b) of this section;

(b) ~~[Send by mail form CS-122, Advance Notice of Intent to Collect Past Due Support, to an obligor notifying that the obligor may contest the accuracy of a past due amount by requesting an administrative hearing as specified in 921 KAR 1:430; and~~

~~(e)]~~ Notify the Finance and Administration Cabinet to offset administrative payments, including tort claim settlements, in accordance with KRS 205.712(17), for a case identified in paragraph (a) of this subsection.

(4) Financial Institution Data Match (FIDM). The cabinet shall:

(a) Use the following criteria to identify a case for seizure of assets:

1. Assignment of support is made to the cabinet; or

2. Child Support Enforcement program is providing support services; and

3. The obligor has failed to make child support payments in an amount equal to support payable for one (1) month[The obligor owes an arrearage equal to at least six (6) months obligation or \$1,000, whichever is less; and

2. The obligor is not complying with the most recent assigned support order;]

(b) Issue a CS-68, Order to Withhold and Deliver, and CS-69, Answer to Withhold and Deliver, to a financial institution holding the obligor's account or accounts;

(c) Issue a CS-68 and CS-121, Noncustodial Parent's Answer to Withhold and Deliver, to the obligor ~~[by certified mail]~~ within two (2) working days:

1. After both of the forms specified in paragraph (b) of this subsection are issued to the financial institution; and

2. To notify[After notifying] the obligor that the funds in the account with the financial institution may be retained by requesting an administrative hearing to contest the Order to Withhold and Deliver[contesting the order to withhold and requesting an administrative hearing] in accordance with 921 KAR 1:430;

(d) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar days from the date of receipt of a CS-68:

1. Pay the total arrearage;

2. Request and administrative hearing to contest the CS-68; or

3. Post a bond satisfactory to the cabinet.

(e) After an administrative hearing, if a case does not qualify for the withhold and deliver process, send a CS-70, Release of Order to Withhold and Deliver to:

1. The obligor; and

2. The financial institution.[Refer the case for parent locator service, if a CS-68 is returned and the forwarding address for the obligor is unknown;

(e) Send to the financial institution a CS-83, Order to Deliver if:

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (g) of this subsection;

(f) Send within twenty (20) calendar days of an administrative hearing decision, a:

1. CS-83 to the financial institution, if a case qualifies for the withhold and deliver process; or

2. CS-70, Release of Order to Withhold to the financial institution and an obligor, if a case does not qualify for the withhold and deliver process; and

(g) Notify an obligor that to retain the funds in the account with the financial institution, an obligor shall take one (1) of the following actions within twenty (20) calendar days from the date of receipt of a CS-68

1. Pay the total arrearage;

2. Post a bond for the total arrearage; or

3. Sign a CS-78, Payment Agreement, to pay within fifteen (15) calendar days:

a. Current support;

b. A \$1000 lump sum payment which may be negotiated if the amount:

(i) Places an unjust burden on the obligor; or

(ii) Prevents the obligor from obtaining or retaining employment;

c. A negotiated percentage of the remaining arrearage balance which shall be agreed upon by the obligor and the cabinet; and

d. An arrearage payment for subsequent months as determined by one (1) of the following:

(i) An amount established by a court order;

(ii) If there is not a court order for arrearage judgment, the payment shall be twenty-five (25) percent of the court-ordered current support obligation; or

(iii) If current support is not owed, the minimum payment shall be equal to the most recent court-ordered support obligation.]

(5) If a seizure of assets request is identified, as specified in subsection (4)(a) of this section, and is initiated from outside the commonwealth as a result of a FIDM, pursuant to 42 U.S.C. 666(a)(17), the cabinet shall comply with KRS 205.712, 407.5305, and 407.5507 to issue:

(a) A CS-68 and a CS-69 to a financial institution holding the obligor's account or accounts;

(b) A CS-68 and a CS-121, Noncustodial Parent's Answer to Withhold and Deliver, [CS-121.1, Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases,] to the obligor [by certified mail] within two (2) working days after both of the forms specified in paragraph (a) of this subsection are issued to the financial institution; and

(c) A CS-70 to the financial institution, [a:

1. CS-83 if there is no dispute; or

2. CS-70] if the initiating state's request is withdrawn.

[(6) Lump sum payment.

(a)1. Written notice provided by an employer as required by KRS 405.465(6) shall be sent to the Department for Income Support, Child Support Enforcement, and shall include the:

a. Name of the employee;

b. Social Security number of the employee;

c. Amount of the lump sum payment; and

d. Intended payment date; and

2. The notice may include multiple employees on one (1) written notification if information in accordance with subparagraph 1 of this paragraph is provided for each employee.

(b) Upon receipt of notification, pursuant to paragraph (a) of this subsection, Child Support Enforcement shall determine if the:

1. Employee owes an arrearage on an assigned support obligation; and

2. Requirements of KRS 405.465(1) are met.

(c) If the employee owes no arrearage, Child Support Enforcement or its designee may notify the employer to release the lump sum payment to the employee.

(d) If the employee owes an arrearage, pursuant to subparagraph (b) of the subsection, Child Support Enforcement or its designee shall initiate:

1. A court order to the employer in accordance with KRS 405.465; or

2. An administrative order in accordance with KRS 405.470.

(e) If Child Support Enforcement or its designee does not contact the employer, the employer shall:

1. Hold the lump sum for thirty (30) calendar days, in accordance with KRS 405.465(6)(a), from the projected date of its release; and

2. Release the lump sum payment to the employee after the 30th calendar day, unless the employer has received from Child Support Enforcement or its designee a court order or an administrative order to withhold any portion of the lump sum payment.]

Section 4.[3-Administrative] Enforcement Actions. (1) Liens.

(a) The cabinet shall file a lien on an obligor's interest in personal or real property, in accordance with KRS 205.745, if:

1. The obligor owes an arrearage equal to or greater than one (1) month's obligation;

2. The child support has been assigned to the cabinet;[The obligor's account has been audited and the arrearage confirmed;]

3. The property has been identified and located; and

4. The value of the property exceeds the costs related to filing the lien.

(b) To file a lien, the cabinet shall[issue a]:

1. Issue a[a. CS-92, Intrastate Notice of Lien, for property within Kentucky, in accordance with KRS 205.745; or

b.] CS-85, Notice of Lien, for property within or outside Kentucky in accordance with KRS 205.745 or 205.7785; and

2. Provide a CS-119, Noncustodial Parent's Notice of Lien, along with a copy of the CS-85 to the obligor notifying him that:

a. The obligor may contest the lien as specified in 921 KAR 1:430;

b. A transfer of property in order to avoid payment shall be considered an act of fraud, in accordance with KRS 405.060(2); and

c. If the obligor makes full payment of the arrearage, including interest, penalties, and fees, a CS-120, Release of Lien, shall be provided to the obligor;

(c) To release a lien, the cabinet shall provide a CS-120, Release of Lien, to the obligor.[(b)1. If the conditions for filing a lien pursuant to paragraph (a) of this subsection are not met, the cabinet shall: Provide a CS-122 to the obligor notifying that:

a. Past due amounts shall be reported to a certified consumer reporting agency; and

b. The obligor may contest the accuracy of the information by requesting an administrative hearing as specified in 921 KAR 1:430;

2. Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies as specified in KRS 205.768, if:

a. The advance notice is returned as undeliverable; and

b. Subsequent location efforts are unsuccessful; and

3. Submit the obligor's name and arrearage amount for inclusion on a periodic report made available to a certified consumer reporting agency, if the obligor does not pay in full or appeal within thirty (30) calendar days from the date of notice.]

(2) License and certificate denial, suspension, or revocation.

(a) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 205.712(9) [and (10), the cabinet shall]:

1. The cabinet shall forward the name of the individual to a board of licensure or board of certification for the notification of the denial, revocation, or suspension of a driver's license, professional license or certification, occupational license or certification, recreational license, or sporting license.

2. The denial or suspension shall remain in effect until:

a. The obligor makes full payment of the arrears;

b. Payments on the past due child support are made in accordance with a court order, an administrative order, or Payment Agreement, CS-78;

c. The obligor complies with the subpoena or a warrant relating to paternity or child support proceedings has been removed;

d. The obligor provides supporting documentation of extenuating circumstances that is accepted by the cabinet; or

e. The appeal of the denial or suspension is upheld and the license is reinstated.

3. The cabinet shall[(a) Determine if an obligor holds and, if so, take action against one (1) or more of the following:

1. Professional license or certificate;

2. Occupational license or certificate;

3. Recreational license;

4. Sporting license; or

5. Driver's license, for arrearages that have accrued since January 1, 1994;

(b)] send to the obligor[by certified mail]:

a.[1.] A CS-44, Notice of Intent to Request Denial or Suspension, which includes:

i. A section for an Answer to Notice of Intent providing the obligor with notice of;

2. Notification that the obligor's right to[obligor may] request an administrative hearing contesting the action as specified in 921 KAR 1:430; and

ii.[3.] Notification that the CS-63, Notice to Licensing/Certification Board or Agency shall be rescinded if an action specified in paragraph (a)2 of this subsection has been taken.

4. The cabinet shall[the obligor:

a. Takes action as specified in Section 2(4)(g) of this administrative regulation; or

b. Complies with a subpoena or warrant, in accordance with KRS 205.712(11);

(c) Refer the case for parent locator service, if the CS-44 is returned and the forwarding address unknown;

(d)] send to the issuing agency or board of licensure or certification a CS-63, if an action in paragraph (a)2 of this subsection has not been taken.

5. The cabinet shall;

1. There is no dispute; or

2. The obligor does not take an action specified in paragraph (b)3 of this subsection;

(e) send to the issuing agency or board of licensure or certification a CS-63, within twenty (20) calendar days of the date of administrative hearing decision, if an administrative hearing results in a finding that the case qualifies for:

- a.[1.] A license or certificate denial;
- b.[2.] Suspension; or
- c.[3.] Revocation; and

6. The cabinet shall[(f)] Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor, in accordance with KRS 205.712(11):

- a. Has eliminated the child support arrearage;
- b. Is making payments on the child support arrearage in accordance with a court or administrative order; or

c.:

1. Takes action as specified in Section 2(4)(g) of this administrative regulation; or

2. Complies with a subpoena or warrant relating to paternity or child support proceedings.

(b)[(3)] If an obligor owes an arrearage equal to or greater than one (1) year's obligation, the cabinet shall take action against a license to carry a concealed deadly weapon as specified in KRS 237.110(4).

(3) Vehicle booting.

(a)[(4)] If an obligor owes an arrearage equal to or greater than six (6) months obligation of an assigned support obligation and fails to comply with a subpoena or warrant relating to a child support proceeding, the cabinet may enforce a lien on a vehicle registered to the obligor by immobilization with a vehicle boot as established in KRS 205.745(9).

1.[(a)] The cabinet shall:

a. Verify with the Department of Vehicle Regulation that the vehicle identification number for the vehicle to be booted is registered in the obligor's name;

b. Verify the vehicle to be booted is solely owned by the obligor, co-owned by the obligor and current spouse, or owned by a business in which the obligor is the sole proprietor;

c. Send a notice of intent to the obligor, unless there is reason to believe that the obligor will leave town or hide the vehicle;

d. File a lien in the county where the vehicle is kept; and

e. Set a target date for booting the vehicle, if the obligor does not contact the cabinet within ten (10) days of notice to negotiate a settlement.[give prior notice in accordance with paragraph (b)1 of this subsection to the obligor of the date the appropriate local law enforcement personnel intend to boot a vehicle.

(b) The delinquent obligor shall:

1. Have ten (10) calendar days to respond to a notice of intent to boot a vehicle; and

2. Take action as specified in Section 2(4)(g) of this administrative regulation to release the vehicle boot.

(c) If the requirements in paragraph (b) of this subsection are met the:

1. Obligor shall pay the:

a. Forty (40) dollar cost of the removal of a vehicle boot to the appropriate local law enforcement personnel; and

b. Cost of towing and storage if a charge is incurred; and]

2. The cabinet shall send a cancellation notice to the obligor and to the appropriate local law enforcement personnel to terminate the booting of the vehicle.

4.[(5) A] Newspaper publication of a list of delinquent obligors.

(a) If an obligor owes an arrearage equal to or greater than six (6) months of an assigned support obligation or fails to comply with a subpoena or warrant relating to paternity or child support proceedings, as established in KRS 405.411, a cabinet designee under 205.712(6) may:

1. Compile and furnish a list to a newspaper of general circulation in that county for publication; and

2. as established in KRS 405.411, provided by the Cabinet for Health and Family Services, Department for Income Support, Child Support Enforcement, shall:

(a) Identify an obligor as specified by subsection (7)(a) of this section;

(b) Include the name, last known address, and the past due amount owed by[ef] the obligor [meeting the criteria; and

(c) Be published no less than twice yearly].

(6) Passport denial, revocation, or limitation.

(a) If the obligor owes an arrearage of \$2,500 or more, in accordance with 42 U.S.C. 652 and 654(31), the cabinet shall:

1.a. Provide the Advance Notice to Collect Past due Support, CS-122, to the obligor of the determination to be referred for passport denial, revocation, or limitation; and

b. Include in the notice the consequences of the referral and the right to contest the action by requesting a hearing in accordance with KRS 205.712(8);

2. Provide the U.S. Secretary of Health and Human Services the names of individuals and supporting documentation for the denial, revocation, or limitation of the obligor's passport.

3.[(a)] Take the action required by KRS 205.712(8);

(b) Provide the advance notice to the obligor required by KRS 205.712(8) by sending the obligor a CS-122; and

(c) Notify the Secretary of the U.S. Department of Health and Human Services that the cabinet requests the release of the passport of an obligor that had been denied if any of the following criteria are met:

a. There was an erroneous submittal of a Social Security number;

b. There is a case of mistaken identity and the cabinet has verified this information;

c. The obligor is required to pay the past due support in full;

d. The obligor provides documentation on company letterhead verifying travel for employment or business purposes and makes alternate payment arrangements acceptable to the cabinet; or

e. There are extenuating circumstances in which the reason for travel is a family emergency and supporting documentation is provided to and accepted by the cabinet.[rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than \$2,500;

2. The obligor is in compliance with payments ordered in an existing arrearage judgment;

3. A payment reduces the arrearage to less than \$2,500; or

4. The obligor takes action as specified in Section 2(4)(g) of this administrative regulation.];

(7) Delinquent list.

(a) The cabinet shall[If an obligor owes an arrearage equal to or greater than \$10,000, the cabinet shall:

(a) Use the following criteria to designate an obligor for a delinquent listing:

1. The obligor's nonpayment within the last six (6) months;

2. The obligor's known address;

3. The cabinet is the payee for support; and

4. Audited arrearages by the cabinet within the last year;

(b) provide to the Office of the Attorney General a list of names of delinquent obligors[delinquent listing no less than twice yearly] for publication on the Internet, as established in KRS 15.055 and 205.712(16);

(b) The cabinet shall send the[(c) Send to an] obligor meeting the criteria in 40 KAR 1:080 a[paragraph (a) of this subsection the] CS-175, Notice of intent to Place Noncustodial Parent's Name on Delinquent Listing notifying him of his right to contest by requesting a hearing.];

[(d) Not include the obligor in the delinquent listing if the obligor takes action as specified in Section 2(4)(g) of this administrative regulation;

(e) Accept an obligor's request for an administrative hearing as specified in 921 KAR 1:430;

(f) Refer the case for parent locator service if the notice is returned and the forwarding address unknown;

(g) Include the obligor in the delinquent listing provided to the Office of the Attorney General if there is:

1. No dispute;

2. A hearing that results in a finding that the case qualifies for the delinquent listing; or

3. No action taken by the obligor as specified in Section 2(4)(g) of this administrative regulation; and

(h) Advise the Office of the Attorney General to remove an obligor from the listing, if the obligor takes action as specified in Section 2(4)(g) of this administrative regulation.

(8) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding, the cabinet shall:

(a) Pursue action in accordance with the provisions of subsection (2) of this section; and

(b) Notify the person that a license or certificate may be retained by complying with the subpoena or warrant.]

Section 5.4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CS-44 Notice of Intent to Request Denial or Suspension", edition 9/10[4/09];

(b) "CS-63 Notice to Licensing/Certification Board or Agency", edition 9/10[4/09];

(c) "CS-68 Order to Withhold and Deliver", edition 9/10[4/09];

(d) "CS-69 Answer to Withhold and Deliver", edition 9/10[4/09];

(e) "CS-70 Release of Order to Withhold and Deliver", edition 9/10[4/09];

(f) "CS-72 National Medical Support Notice", edition 9/10[4/09];

(g) "CS-73 Unemployment Insurance Letter", edition 9/10[4/09];

(h) "CS-76 Unemployment Insurance Notice of Withholding", edition 9/10[4/09];

(i) "CS-78 Payment Agreement", edition 9/10[4/09];

(j) "CS-83 Order to Deliver", edition 4/09;

(k) "CS-85 Notice of Lien", edition 9/10[4/09];

(l) "CS-89 Income Withholding for Support", edition 9/10[4/09];

(m) "CS-92 Intrastate Notice of Lien", edition 4/09;

(n) "CS-119 Noncustodial Parent's Notice of Lien", edition 9/10[4/09];

(o) "CS-120 Release of Lien", edition 9/10[4/09];

(p) "CS-121 Noncustodial Parent's Answer to Withhold", edition 9/10[4/09];

(q) "CS-121. 1. Noncustodial Parent's Answer to Withhold-Limited Enforcement of Interstate Cases", edition 4/09;

(r) "CS-122 Advance Notice of Intent to Collect Past-Due Support", edition 9/10[4/09];

(s) "CS-164 Notice of Income Withholding", edition 4/09; and

(t) "CS-175 Notice of Intent to Place Noncustodial Parent's Name on Delinquent Listing", edition 4/09.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Income Support, Child Support Enforcement, 730 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN P. VENNO, Deputy Commissioner

JANIE MILLER, Secretary

APPROVED BY AGENCY: May 14, 2010

FILED WITH LRC: May 14, 2010 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on June 21, 2010 at 9 a.m. in the Cabinet for Health and Family Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by June 14, 2010, five (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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 30, 2010. 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) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Devine, CSE Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for collection and enforcement of child support.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out the duties of collecting and enforcing child support mandated by state and federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Cabinet has responsibility under KRS 15.055(2), 194A.050(1), 205.712(2)(o), 205.712(16), 205.745(9), 205.7685(3), 205.795, 405.411(2), 405.520, and by virtue of applying for federal funds under 42 U.S.C. 654, 659, 666 to establish procedures to collect and enforce child support obligations for recipients of IV-A, IV-E, Title XIX, and individuals who apply for IV-D services. This administrative regulation sets forth such procedures and processes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Child Support Enforcement Program and Contracting Officials in the administration of the statutes by updating procedures and forms to be used for collection and enforcement services.

(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 update policy to reflect advancements in technology for submission between central office and Contracting Officials throughout the state. This amendment will also update policy to comply with Federal regulations in 45 C.F.R. 302 and 303. The following incorporated forms were revised to implement the notice of right to request an administrative hearing and include revisions to improve effectiveness and provide additional information to the recipient: "CS-44, Notice of Intent to Request Denial or Suspension", "CS-63, Notice to Licensing/Certification Board or Agency", "CS-68, Order to Withhold and Deliver", "CS-69, Answer to Withhold and Deliver", "CS-70, Release of Order to Withhold and Deliver", "CS-72, National Medical Support Notice", "CS-73, Unemployment Insurance Letter", "CS-76, Unemployment Insurance Notice of Withholding", "CS-78, Payment Agreement", "CS-85, Notice of Lien", "CS-89, Income Withholding for Support", "CS-119, Noncustodial Parent's Notice of Lien", "CS-120, Release of Lien", "CS-121, Noncustodial Parent's Answer to Withhold", "CS-122, Advance Notice of Intent to Collect Past-Due Support".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide notice of the noncustodial parent's right to request an administrative hearing to the forms incorporated in this regulation, pursuant to 42 U.S. Code 666 and KRS Chapters 205, 405, and 407.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by outlining the processes used by the Cabinet in collection and enforcement of child support. This amendment also provides notice on the form(s) of intended action(s) to the noncustodial parent of their right to request an administrative hearing to contest an intended action.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides information that was missing to the employer, health plan administrator, and parents that will improve the efficiency of the program. This amendment outlines the request for information that the program is federally mandated to ask for which will improve the effectiveness of the program. This amendment will also assist in the administration of the statutes through its updates to state child support forms incorporated by reference in this regulation further improving the program effectiveness and efficiency.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the entities that are required to withhold earnings/income (any employer within and outside of

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Kentucky who employs an individual who owes a child support obligation and financial institutions within and outside of Kentucky), Contracting Officials, Child Support Enforcement (CSE) Program, noncustodial parents, custodial parents and their child(ren).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added to those already existing for any noncustodial parent or custodial parent.

There are no new responsibilities added for businesses/employers. The timeframes for submission of information and payments have been clarified for employers regarding wages and health insurance coverage. Contracting Officials' and CSE staff will use the updated forms and procedures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs for the entities involved to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Due to the noncustodial parent and custodial parent's compliance with this amendment, the best interest of the child(ren) will be served as the child(ren) will receive the child and/or medical support obligation ordered in the most effective manner. This amendment continues child support collection and enforcement services at no additional cost.

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

(a) Initially: There are no additional fees and no increase in funding necessary for this amendment to this administrative regulation.

(b) On a continuing basis: There are no additional fees and no increase in funding on a continuing basis for this 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 sources of funding include state general funds and federal funds authorized and appropriated under 42 U.S.Code 651-669B, Title IV-D of the Social Security Act.

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

(8) State whether or not this administrative regulation established any fees directly or indirectly increased any fees: This administrative regulation does not establish or increase, directly or indirectly, any additional fees.

TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies uniformly on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 652, 653, 654, 656, 659, 664, 666(a), (b), and (c), 669A; 31 C.F.R. 285.1 and 285.3; 45 C.F.R. 302.32-302.36, 302.60-302.80, 303.3, 303.6, 303.31, 303.35, 303.70, 303.100-303.102.

2. State compliance standards. KRS 15.055(2), 131.570, 161.700, 186.570, 194A.050(1), 205.595, 205.710-205.802, 403.211-403.215, 405.405-405.991, 407.5101-407.5902.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation comply with 45 C.F.R. 302.70 and 42 U.S.C. 654 and 666 (a), (b), and (c).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, because federal law and regulation does not require certified mail for service of process under 42 U.S.C. 666(c). In 1996 when PRWORA was passed it amended 42 U.S.C. 666 by adding paragraph (c), which requires expedited process to last known address of parties in-

involved in a child support case, and 45 C.F.R. 303.101 further defines the state requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no justification for the imposition of the stricter standard and it is costly to the CSE program. CSE has tried to get an amendment to the language in Kentucky law asking for the certified mail, return receipt requested, requirements be removed, but has not been successful in getting legislation passed. Kentucky Revised Statute (KRS) 405.465 and 405.467 require the order for income withholding be sent to the employer of an obligor by certified mail, return receipt requested. KRS 405.480 requires personal service or certified mail, return receipt requested, for service of an order to withhold and deliver on the person in possession or control of the property and the obligor.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Income Support, Child Support Enforcement and local Contracting Officials are impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.055(2), 131.570, 161.700, 186.570, 194A.050(1), 205.595, 205.710-205.802, 403.211-403.215, 405.405-405.991, 407.5101-407.5902, 42 U.S. Code 652, 653, 654, 656, 659, 664, 666(a),(b), and (c), 669A; 31 C.F.R. 285.1 and 285.3, 45 C.F.R. 302.32-302.36, 302.60-302.80, 303.3, 303.6, 303.31, 303.35, 303.70, 303.100-303.102.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Child Support Enforcement (CSE) program has been operational since 1975. CSE does not directly generate any revenue as all monies collected are disbursed to the families served or disbursed to the cabinet to reimburse monies paid out in public assistance.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Child Support Enforcement (CSE) program has been operational since 1975. CSE does not directly generate any revenue as all monies collected are disbursed to the families served or disbursed to the cabinet to reimburse monies paid out in public assistance.

(c) How much will it cost to administer this program for the first year? There will be no additional costs; this program has been operational since 1975.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs; this program has been operational since 1975.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, MAY 14, 2010

GENERAL GOVERNMENT CABINET
Board of Nursing
(New Administrative Regulation)

201 KAR 20:510. Voluntary relinquishment of a license or credential.

RELATES TO: KRS 314.071(2)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.071(2) requires a nurse to reinstate a lapsed license. This administrative regulation sets the procedure for a nurse who desires to relinquish a license prior to its expiration date. The same procedure shall apply to advanced practice registered nurses, sexual assault nurse examiners, and dialysis technicians with the credential issued by the board.

Section 1. (1) A person holding a license or credential issued by the board may voluntarily relinquish that license or credential prior to its expiration date.

(2) The request to relinquish shall be in writing to the board.

(3) The board shall lapse the license or credential unless the person is:

(a) currently under investigation or being monitored by the board; or

(b) subject to disciplinary action by any board of nursing.

Section 2. A person who has voluntarily relinquished his or her license or credential shall be subject to the reinstatement provisions of 201 KAR 20:056, Section 6; 201 KAR 20:225, Section 1; 201 KAR 20:411, Section 9; or 201 KAR 20:470, Section 4; as applicable.

JIMMY ISENBERG, President

APPROVED BY AGENCY: April 16, 2010

FILED WITH LRC: April 23, 2010 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2010 at 10 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 14, 2010, 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 close of business June 30, 2010. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the procedure for a nurse or dialysis technician to voluntarily give up their license or credential prior to its expiration date.

(b) The necessity of this administrative regulation: The board has been contacted by individuals who wish to voluntarily give up their license or credential before it expires. There is no current procedure to allow this. This administrative regulation will set such a procedure.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: By setting the necessary procedure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the necessary procedure.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(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: Potentially, all nurses and dialysis technicians. There are approximately 69,000 nurses and 1,000 dialysis technicians.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will need to follow the procedure outlined in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the regulation.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency 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 needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

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(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of May 11, 2010

Call to Order and Roll Call

The May meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, May 11, 2010 at 1:00 p.m., in Room 149 of the Capitol Annex. Senator Elizabeth Tori, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the April 2010 meeting were approved.

Present were:

Members: Senators Elizabeth Tori, David Givens, Alice Forgy-Kerr and Joey Pendleton and Representatives Leslie Combs, Danny Ford and Jimmie Lee.

LRC Staff: Dave Nicholas, Donna Little, Sarah Amburgey, Chad Collins, Emily Harkenrider, Karen Howard, Emily Caudill, Jennifer Beeler, and Laura Napier.

Guests: David Gordon, Wayne Gunnell, DeVon Hankins, Gary Morris, Janine Shackelford, Lisa Swiger, Finance and Administration Cabinet; Nathan Goldman, Board of Nursing; Margaret Everson, Jon Gassett, Department of Fish and Wildlife Resources; Peter Goodman, Abigail Powell, EEC: Division of Water; Ann Dangelo, Transportation Cabinet; Kevin Brown, Larry Stinson, Kentucky Department of Education; Michael Bennett, Dawn Bellis, Timothy House, Dan Chapman, Department of Housing, Buildings and Construction; Jeff Bechtold.

The Administrative Regulation Review Subcommittee met on Tuesday, May 11, 2010, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Forms

103 KAR 3:010. General Administrative Forms manual. David Gordon, executive director, and Janine Shackelford, branch manager, represented the department.

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.

103 KAR 3:030. Property and Severance Forms manual.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 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.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board

201 KAR 20:240. Fees for applications and for services. Nathan Goldman, general counsel, represented the board.

201 KAR 20:490. Licensed practical nurse intravenous therapy scope of practice.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph 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; and (3) to amend Sections 1, 2, 4, 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.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:172. Deer hunting seasons, zones, and requirements. Margaret Everson, assistant attorney general, and Jon Gassett, commissioner, represented the department.

In response to a question by Senator Pendleton, Mr. Gassett stated that this administrative regulation did not address the cross-bow issue. He stated that it did reflect 2010 Senate Bill 66, which allowed crossbows and other weapons to be carried but not used to take an animal.

In response to a question by Co-Chair Tori, Mr. Gassett stated that the administrative regulation established a season for the after-Christmas youth hunt, which began the first Saturday after Christmas.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to clarify what items are prohibited from being used in the taking of deer; (2) to amend Sections 1, 3, 4, 5, 6, and 8 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) 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. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:178. Deer hunting on wildlife management areas and state parks.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to clarify the areas regulated by this administrative regulation; and (2) to amend Sections 1, 2, 5, 6, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:020. Public and semipublic water systems; general provisions. Peter Goodman, assistant director, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 5, and 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with the agreement of the agency, the amendments were approved.

401 KAR 8:070. Public notification.

401 KAR 8:200. Microbiological monitoring.

A motion was made and seconded to approve amending 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. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 8:250. Inorganic and organic chemical sampling, analytical techniques, and maximum contaminant levels.

A motion was made and seconded to approve amending 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. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 8:300. Lead and copper.

A motion was made and seconded to approve amending 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. Without objection, and with agreement of the agency, the amendment was approved.

401 KAR 8:510. Disinfectant residuals, disinfection by-products, and disinfection by-product precursors.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

401 KAR 8:550. Radionuclides.

A motion was made and seconded to approve amending 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. Without objection, and with agreement of the agency, the amendments were approved.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Drivers License: Driver's License

601 KAR 12:060. Hardship driver's license. Ann D'Angelo, assistant general counsel, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to add 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; and (3) to amend Sections 1, 2, 5, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION CABINET: Kentucky Board of Education: Department of Education: School Administration and Finance

702 KAR 3:030. Insurance requirements. Kevin Brown, general counsel, and Larry Stinson, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert 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; and (3) 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.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

815 KAR 20:191. Minimum fixture requirements. Dawn Bellis, general counsel, and Timothy House, director, represented the division.

In response to a question by Representative Ford, Mr. House stated that this administrative regulation allowed a single, unisex bathroom for small venues and revised the plumbing code to reflect U.S. FDA requirements.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to delete references; and (2) to amend Sections 2, 3, 5 to 9, and 11 to 18 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Building Code Enforcement: Manufactured Homes and Recreational Vehicles

815 KAR 25:080. Requirements for certified installer seals and certification of manufactured home installers. Michael Bennett, staff attorney, and Dan Chapman, section supervisor, represented the division.

In response to a question by Senator Givens, Mr. Bennett stated that the public did not submit comments during the public comment period.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 3, 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.

Other Business: Dinah Bevington, general counsel, represented the Personnel Cabinet and briefed the Subcommittee on the possibility that the cabinet would need to file emergency administrative regulations prior to the June 8 meeting of the Subcommittee if a budget was not enacted by the General Assembly prior to that

time. The emergency administrative regulations would address how to administer a state government shutdown, including procedures for providing notice to employees and guidance for consistent, statewide implementation.

In response to questions by Representative Lee, Ms. Bevington stated that the plan was for letters to go out at least two (2) weeks prior to a government shutdown, but that it was possible that some agencies would need earlier notice.

Representative Lee made a motion that was duly seconded to request that the Personnel Cabinet notify Administrative Regulation Review Subcommittee members in advance of the letters being sent to state employees. During the roll call vote, Senator Givens stated that he was voting no because there may not be time for the cabinet to provide advance notice to Subcommittee members by mail but he supported receiving an email. Senator Kerr and Representative Ford both voted yes and stated that the best option was for Governor Beshear to call a Special Session of the General Assembly prior to the need for these administrative regulations. Senator Kerr also stated that she hoped this briefing was not a "scare tactic." Senator Pendleton and Co-Chair Tori voted yes and stated that the Subcommittee members needed notice before constituents called them with questions. The motion was approved with a six (6) to one (1) vote.

In response to a question by Senator Givens, Ms. Bevington stated that the notification would not be a notification of termination or layoff, but would be a notification that the employee was subject to mandatory leave.

Representative Lee stated that he had already gotten calls from constituents stating that they had received "pink slips." Ms. Bevington stated that action had not yet been taken. Senator Pendleton stated that he believed those letters were from school boards that had to send the notices as part of their budgeting process.

In response to a question by Co-Chair Tori, Ms. Bevington stated that the amendments would consist of changes to the administrative regulation that governed employee leave. Staff clarified that employee leave was governed by two (2) administrative regulations.

Representative Lee made a motion that was duly seconded to request that the Personnel Cabinet submit the administrative regulations to the Subcommittee at the same time as the statutorily required submittal to the Personnel Board pursuant to KRS 18A.110(6). Without objection, the motion was approved.

In response to a question by Subcommittee staff, Ms. Bevington stated that the cabinet has statutory authority to establish the mandatory leave procedures pursuant to KRS 18A.110; therefore, it would be unnecessary for Governor Beshear to include a statutory amendment to Personnel statutes as part of the call for a Special Session of the General Assembly.

Subcommittee staff stated that an emergency administrative regulation could not be amended; therefore, it was crucial for the administrative regulation to be correct before it was filed with the Compiler. Staff assistance was offered, and Ms. Bevington accepted and stated appreciation for the assistance.

In response to a question by Co-Chair Tori, Ms. Bevington stated that she did not have information regarding how many teachers may be affected by a state government shutdown.

The following administrative regulations were deferred to the June 8, 2010, meeting of the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student Services: Kentucky Educational Savings Plan Trust

11 KAR 12:060. Cancellation, partial withdrawal, and payment of refund.

PERSONNEL CABINET: Personnel Cabinet, Classified

101 KAR 2:066 & E. Certification and selection of eligibles for appointment.

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FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Division of Sales and Use Taxes: Sales and Use Tax; Administration and Accounting

103 KAR 31:310. Sourcing of digital property.

Office of the Secretary: Purchasing

200 KAR 5:315. Suspension.

GENERAL GOVERNMENT CABINET: State Board of Examiners and Registration of Landscape Architects: Board

201 KAR 10:050. Fees.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Waste Management: Solid Waste Facilities

401 KAR 47:090. Solid waste permit fees.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:400. Limited services clinics.

The subcommittee adjourned at 1:45 p.m. until June 8, 2010.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

L - 2

The Locator Index lists all administrative regulations published in VOLUME 36 of the Administrative Register from July, 2009 through June, 2010. 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 35 are those administrative regulations that were originally published in VOLUME 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 bound Volumes were published.

KRS Index

L - 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 36 of the Administrative Register.

Technical Amendment Index

L - 26

The Technical Amendment Index is a list of administrative regulations which have had technical, nonsubstantive amendments entered since being published in the 2009 bound Volumes. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10) or 13A.312(2). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register. NOTE: Copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at <http://www.lrc.ky.gov/home.htm>.

Subject Index

L - 27

The Subject Index is a general index of administrative regulations published in VOLUME 36 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
VOLUME 35					
The administrative regulations listed under VOLUME 35 are those administrative regulations that were originally published in Volume 35 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2009 bound Volumes were published.					
EMERGENCY ADMINISTRATIVE REGULATIONS:			200 KAR 5:315		
(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Amended	2779	(See 36 Ky.R.)
101 KAR 2:066E			200 KAR 5:380		
Resubmitted	F-1710	1-9-09	Amended	2331	
103 KAR 3:030E	2635	5-14-09	As Amended	2663	7-6-09
Replaced		(See 36 Ky.R.)	200 KAR 6:070	2371	
105 KAR 1:130E	2385	4-15-09	Amended	2764	(See 36 Ky.R.)
Replaced		(See 36 Ky.R.)	200 KAR 14:011		
200 KAR 6:070E	2199	2-17-09	Amended	2332	
Replaced		(See 36 Ky.R.)	As Amended	2664	7-6-09
200 KAR 14:011E	2200	2-19-09	200 KAR 17:010		
Replaced	2664	7-6-09	Amended	2474	(See 36 Ky.R.)
200 KAR 15:010E	1984	2-2-09	201 KAR 1:065		
Expired		8-1-09	Amended	2781	(See 36 Ky.R.)
201 KAR 21:090E	2645	5-12-09	201 KAR 1:100		
Replaced		(See 36 Ky.R.)	Amended	2782	(See 36 Ky.R.)
201 KAR 37:010E	2646	5-7-09	201 KAR 2:045		
Replaced		(See 36 Ky.R.)	Amended	2484	(See 36 Ky.R.)
302 KAR 16:111E	1986	2-13-09	201 KAR 2:320	2832	(See 36 Ky.R.)
Replaced	2429	6-5-09	201 KAR 10:050		
505 KAR 1:100E	F-1721	1-15-09	Amended	F-1834	7-6-09
Replaced	2741	7-6-09	201 KAR 16:015		
735 KAR 1:010E	2387	4-7-09	Amended	J-1854	10-2-09
Replaced		(See 36 Ky.R.)	201 KAR 18:115		
735 KAR 1:020E	2391	4-7-09	Amended	2335	
Replaced		(See 36 Ky.R.)	Amended	2765	7-31-09
787 KAR 1:330E	2648	4-17-09	201 KAR 18:142		
Withdrawn		7-10-09	Amended	2337	
806 KAR 18:090E	2395	3-13-09	Amended	2768	(See 36 Ky.R.)
Expired		9-9-09	201 KAR 20:056		
811 KAR 2:120E	F-1722	12-31-08	Amended	2787	8-12-09
Replaced	2743	7-6-09	201 KAR 20:057		
907 KAR 1:028E	2650	5-7-09	Amended	2790	8-12-09
Replaced		(See 36 Ky.R.)	201 KAR 20:162		
907 KAR 1:901E(r)	2653	5-7-09	Amended	2791	8-12-09
Expired		11-3-09	201 KAR 20:225		
ORDINARY ADMINISTRATIVE REGULATIONS:			Amended	2340	
10 KAR 7:010			As Amended	2666	6-11-09
Amended	1237		201 KAR 20:260		
Withdrawn		12-16-08	Amended	2793	(See 36 Ky.R.)
Amended	2464	(See 36 Ky.R.)	201 KAR 20:270		
10 KAR 7:020			Amended	2341	
Amended	2466	(See 36 Ky.R.)	As Amended	2667	6-11-09
11 KAR 4:080			201 KAR 20:290		
Amended	2314		Amended	2343	
Amended	2315	(See 36 Ky.R.)	As Amended	2668	6-11-09
11 KAR 5:200			201 KAR 20:360		
Amended	2315	(See 36 Ky.R.)	Amended	2346	(See 36 Ky.R.)
11 KAR 18:010			201 KAR 21:090		
Amended	2317	(See 36 Ky.R.)	Amended	2796	(See 36 Ky.R.)
16 KAR 5:010			201 KAR 21:095		
Amended	2321		Amended	2126	
As Amended	2655	6-8-09	Amended	2770	(See 36 Ky.R.)
101 KAR 2:066			201 KAR 22:045		
Amended	F-1815		Amended	2485	(See 36 Ky.R.)
103 KAR 3:010			201 KAR 30:040		
Amended	2468	(See 36 Ky.R.)	Amended	2487	7-31-09
103 KAR 3:030			201 KAR 32:025		
Amended	2775	(See 36 Ky.R.)	Amended	J-1866	
105 KAR 1:130			As Amended	2414	7-31-09
Amended	2472	(See 36 Ky.R.)	201 KAR 32:030		
			Amended	J-1863	
			As Amended	2415	7-31-09
			201 KAR 37:010		
			Amended	2798	(See 36 Ky.R.)

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
300 KAR 7:010	2834	(See 36 Ky.R.)	Repealed	2837	10-2-09
301 KAR 1:201			500 KAR 2:011	2837	10-2-09
Amended	2488	7-30-09	500 KAR 2:020		
301 KAR 2:111			Amended	2817	(See 36 Ky.R.)
Amended	2349		505 KAR 1:100		
As Amended	2670	7-6-09	Amended	F-1851	
301 KAR 2:132			Amended	2454	
Amended	2799	8-28-09	As Amended	2741	7-6-09
301 KAR 2:172			702 KAR 4:160		
Amended	2351		Amended	2142	(See 36 Ky.R.)
As Amended	2671	7-6-09	702 KAR 6:010		
301 KAR 2:178			Amended	2150	(See 36 Ky.R.)
Amended	2354		702 KAR 6:020		
As Amended	2673	7-6-09	Amended	2151	(See 36 Ky.R.)
302 KAR 100:030	2836	(See 36 Ky.R.)	702 KAR 6:031(r)	2187	
401 KAR 5:002			702 KAR 6:040		
Amended	2493	(See 36 Ky.R.)	Amended	2152	(See 36 Ky.R.)
401 KAR 5:005			702 KAR 6:045		
Amended	2507	9-25-09	Amended	2154	(See 36 Ky.R.)
401 KAR 5:055			702 KAR 6:075		
Amended	2520	(See 36 Ky.R.)	Amended	2155	(See 36 Ky.R.)
401 KAR 5:060			702 KAR 6:090		
Amended	2526	9-25-09	Amended	2157	(See 36 Ky.R.)
401 KAR 5:065			702 KAR 7:065		
Amended	2551	9-25-09	Amended	2158	(See 36 Ky.R.)
401 KAR 5:080			702 KAR 7:130	483	
Amended	2559	9-25-09	As Amended	1461	1-5-09
401 KAR 8:010			735 KAR 1:010		
Amended	2804	(See 36 Ky.R.)	Amended	2565	(See 36 Ky.R.)
401 KAR 8:022			735 KAR 1:020		
Amended	2806	(See 36 Ky.R.)	Amended	2570	(See 36 Ky.R.)
401 KAR 8:040			780 KAR 1:010		
Amended	F-1844		Amended	1891	(See 36 Ky.R.)
As Amended	2677	7-6-09	806 KAR 17:480		
401 KAR 8:050			Amended	1607	
Amended	F-1847	7-6-09	Amended	2081	
401 KAR 8:075			As Amended	2742	7-6-09
Amended	2808	(See 36 Ky.R.)	810 KAR 1:009		
401 KAR 8:510			Amended	2573	(See 36 Ky.R.)
Amended	2810	(See 36 Ky.R.)	810 KAR 1:025		
401 KAR 8:600		(See 36 Ky.R.)	Amended	1610	
Amended	2812		Withdrawn		7-17-09
401 KAR 10:026			810 KAR 1:026		
Amended	129		Amended	2577	(See 36 Ky.R.)
Amended	860		811 KAR 1:070		
As Amended	2679	7-6-09	Amended	1617	
401 KAR 10:029			811 KAR 2:120		
Amended	157		Amended	F-1914	
Amended	904		As Amended	2743	7-6-09
As Amended	2721	7-6-09	815 KAR 7:120		
401 KAR 10:030			Amended	2359	
Amended	161		Amended	2772	(See 36 Ky.R.)
Amended	908	(See 36 Ky.R.)	815 KAR 7:125		
401 KAR 10:031			Amended	2362	(See 36 Ky.R.)
Amended	177		815 KAR 10:060		
Amended	930		Amended	2364	(See 36 Ky.R.)
As Amended	2723	7-6-09	815 KAR 20:020		
401 KAR 47:090			Amended	2582	(See 36 Ky.R.)
Amended	2814	(See 36 Ky.R.)	815 KAR 20:060		
401 KAR 101:001	F-1947		Amended	2586	(See 36 Ky.R.)
As Amended	2733	7-6-09	815 KAR 20:070		
401 KAR 101:010	F-1949		Amended	2588	(See 36 Ky.R.)
As Amended	2734	7-6-09	815 KAR 20:071		
401 KAR 101:020	F-1951		Amended	2591	(See 36 Ky.R.)
As Amended	2735	7-6-09	815 KAR 20:074		
401 KAR 101:030	F-1954		Amended	2593	(See 36 Ky.R.)
As Amended	2737	7-6-09	815 KAR 20:077		
401 KAR 101:040	F-1956		Repealed	2624	7-29-09
As Amended	2738	7-6-09	815 KAR 20:079(r)	2624	7-29-09
500 KAR 2:010			815 KAR 20:090		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	35 Ky.R. Page No.	Effective Date	Regulation Number	35 Ky.R. Page No.	Effective Date
Amended	2594	(See 36 Ky.R.)	Amended	1640	
815 KAR 20:100			As Amended	2749	7-6-09
Amended	2598	(See 36 Ky.R.)	907 KAR 1:650		
815 KAR 20:120			Amended	1644	
Amended	2601	(See 36 Ky.R.)	As Amended	2751	7-6-09
815 KAR 20:130			907 KAR 1:655		
Amended	2608	(See 36 Ky.R.)	Amended	1649	
815 KAR 20:170			As Amended	2754	7-6-09
Amended	2612	(See 36 Ky.R.)	907 KAR 3:170		
815 KAR 20:195			Amended	F-1923	
Amended	2613	(See 36 Ky.R.)	Amended	2456	
815 KAR 25:060			As Amended	2757	7-6-09
Amended	2367		908 KAR 3:050		
As Amended	2746	7-6-09	Amended	2618	7-31-09
900 KAR 5:020			908 KAR 3:060		
Amended	F-1918		Amended	2620	7-31-09
Amended	2455	(See 36 Ky.R.)	911 KAR 2:200		
900 KAR 7:030	2838	(See 36 Ky.R.)	Amended	2825	(See 36 Ky.R.)
902 KAR 19:021	2842	8-12-09			
902 KAR 47:200	2843	(See 36 Ky.R.)			
902 KAR 55:110					
Amended	2615	7-31-09			
907 KAR 1:028					
Amended	2822	(See 36 Ky.R.)			
907 KAR 1:585					
Amended	1637				
Amended	F-1802				
As Amended	2747	7-6-09			
907 KAR 1:645					

* Statement of Consideration not filed by deadline
 ** Withdrawn, not in effect within 1 year of publication
 *** Withdrawn before being printed in Register
 (r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

13 KAR 2:045E	971	10-11-09	201 KAR 21:090E		(See 35 Ky.R.)
Replaced	2033-M	4-2-10	Replaced	568	9-16-09
101 KAR 2:066E	275	7-8-09	201 KAR 25:012E	720	8-19-09
Withdrawn		1-4-10	Replaced	2035-A	5-7-10
Resubmitted	1860	1-4-10	201 KAR 37:010		(See 35 Ky.R.)
101 KAR 2:102E	277	7-10-09	Replaced	573	10-2-09
Replaced	1002	12-4-09	301 KAR 2:221E	1168	11-3-09
101 KAR 2:210E	719	9-15-09	Replaced	1911	3-5-10
Replaced	1194	1-4-10	301 KAR 2:222E	1171	11-3-09
101 KAR 3:015E	282	7-15-09	Replaced	1913	3-5-10
Replaced	1006	12-4-09	301 KAR 2:225E	721	8-28-09
103 KAR 3:030		(See 35 Ky.R.)	Replaced	1199	12-11-09
Replaced	310	9-4-09	307 KAR 8:010E	536	8-4-09
103 KAR 3:040	1862	1-15-10	Replaced	1021	12-4-09
Replaced	2021-A	5-7-10	307 KAR 9:010E	724	8-20-09
103 KAR 5:180E	1163	11-13-09	Replaced	1201	1-4-10
Replaced	2028-A	5-7-10	401 KAR 51:001E	725	9-14-09
103 KAR 5:190E	1166	11-13-09	Replaced	1462	2-5-10
Replaced	2040-A	4-2-10	401 KAR 51:017E	738	9-14-09
103 KAR 17:150E	533	7-23-09	Replaced	1260	2-5-10
Replaced	1011	12-4-09	401 KAR 51:052E	754	9-14-09
103 KAR 44:130	535	8-14-09	Replaced	1474	2-5-10
Replaced	1012	12-4-09	401 KAR 8:010E	2281	4-20-10
105 KAR 1:130E		(See 35 Ky.R.)	405 KAR 8:015E	1178	11-3-09
Replaced	19	7-29-09	Withdrawn		4-9-10
105 KAR 1:390E	4	6-15-09	501 KAR 6:020E	767	9-11-09
Replaced	141	10-2-09	Replaced	1486	2-5-10
200 KAR 6:070E		(See 35 Ky.R.)	501 KAR 6:999E	770	9-11-09
Replaced	20	7-29-09	Replaced	916	2-5-10
201 KAR 12:105E	6	6-11-09	503 KAR 1:140E	1871	1-5-10
Replaced	1016	12-4-09	Replaced	2101-M	5-7-10
201 KAR 16:030E	2280	5-13-10	505 KAR 1:160E	1180	11-13-09
			703 KAR 5:080E	8	6-15-09
			Replaced	159	9-14-09
			703 KAR 5:180E	2020-M	1-15-10
			750 KAR 1:010E	1181	11-13-09
			Replaced	2062-M	4-2-10
			735 KAR 1:010E		(See 35 Ky.R.)

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Regulation Number	36 Ky.R. Page No.	Effective Date	Regulation Number	36 Ky.R. Page No.	Effective Date
Replaced	65	7-13-09	Amended	1241	
735 KAR 1:020E		(See 35 Ky.R.)	Amended	1887	3-5-10
Replaced	67	7-13-09	13 KAR 2:045		
806 KAR 17:391E	287	6-25-09	Amended	1083	
Expired		12-23-09	Amended	1951	
806 KAR 17:570E	288	6-26-09	As Amended	2033-M	4-2-10
Replaced	1064	1-4-10	16 KAR 2:010		
810 KAR 1:025E	537	7-20-09	Amended	1294	
Withdrawn		9-30-09	As Amended	1892	3-5-10
Resubmitted	975	9-30-09	16 KAR 2:120		
Withdrawn		3-26-10	Amended	1297	
Resubmitted	2158		As Amended	1894	3-5-10
810 KAR 1:034E	982	9-30-09	16 KAR 2:200	1390	3-5-10
Withdrawn		3-17-10	16 KAR 7:010		
810 KAR 1:037E	2165	3-17-10	Amended	630	
810 KAR 1:100E	2168	3-17-10	As Amended	998	11-9-09
811 KAR 1:034E	986	9-30-09	16 KAR 8:030		
Withdrawn		3-17-10	Amended	125	
811 KAR 1:037E	2169	3-17-10	As Amended	553	9-14-09
811 KAR 1:070E	545	7-20-09	31 KAR 2:010		
Withdrawn		1-15-10	Amended	1087	
Resubmitted	2023-M	1-15-10	As Amended	1896	3-5-10
811 KAR 1:230	2172		31 KAR 2:020	1141	
811 KAR 2:130	2174		Amended	1499	
815 KAR 7:120E	990	10-01-09	As Amended	1903	3-5-10
Replaced	2046-A	5-7-10	31 KAR 3:010		
815 KAR 20:050E	992	10-01-09	Amended	1095	
906 KAR 1:180E	1184	11-13-09	As Amended	1434	
907 KAR 1:028E	820	(See 35 Ky.R.)	31 KAR 4:020		
Replaced	330	8-12-09	Amended	1513	
907 KAR 3:183E	306	6-26-09	As Amended	2037-M	4-2-10
Replaced		11-6-09	31 KAR 4:030		
921 KAR 2:017E	1190	11-2-09	Amended	1515	
Replaced	1372	3-5-10	As Amended	2037-M	4-2-10
921 KAR 2:530E	2294	5-14-10	31 KAR 6:010		
922 KAR 1:060E	994	9-30-09	Amended	2110-M	
Replaced	1494	2-5-10	As Amended	2176	
922 KAR 6:010E	773	8-28-09	101 KAR 1:325		
Replaced	1496	2-5-10	Amended	1961	5-7-10
ORDINARY ADMINISTRATIVE REGULATIONS:			101 KAR 2:066		
10 KAR 7:010		(See 35 Ky.R.)	Amended	414	
As Amended	10	7-31-09	Withdrawn		1-4-10
10 KAR 7:020		(See 35 Ky.R.)	Amended	1963	
As Amended	12	7-31-09	101 KAR 2:102		
11 KAR 3:100			Amended	416	
Amended	109	10-12-09	As Amended	1002	12-4-09
11 KAR 4:080	13	(See 35 Ky.R.)	101 KAR 2:120		
As Amended		7-13-09	Amended	420	
Amended	1960	5-7-10	Withdrawn		12-07-09
11 KAR 5:145			Amended	1516	
Amended	123	10-12-09	As Amended	2038-M	4-2-10
Amended	1508		101 KAR 2:210		
11 KAR 5:200		(See 35 Ky.R.)	Amended	835	
As Amended	13	7-13-09	As Amended	1194	1-4-10
11 KAR 8:030			101 KAR 3:015		
Amended	1510		Amended	423	
As Amended	2031-M	4-2-10	As Amended	1006	12-4-09
11 KAR 12:060			102 KAR 1:160		
Amended	2055-A		Amended	1966	
11 KAR 18:010		(See 35 Ky.R.)	As Amended	2177	
As Amended	14	7-13-09	102 KAR 1:225		
13 KAR 1:020			Amended	1967	
Amended	826		102 KAR 1:310	703	
Amended	1232		As Amended	1010	11-9-09
As Amended	1878	3-5-10	103 KAR 3:010		(See 35 Ky.R.)
Amended	2347		As Amended	16	7-13-09
13 KAR 1:040	942		Amended	2056-A	
Withdrawn		1-7-10	As Amended	2299	
13 KAR 1:050	943		103 KAR 3:020		
			Amended	129	

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Regulation Number	36 Ky.R. Page No.	Effective Date	Regulation Number	36 Ky.R. Page No.	Effective Date
As Amended	555	10-02-09	201 KAR 11:215	485	
103 KAR 3:030		(See 35 Ky.R.)	As Amended	1013	12-4-09
As Amended	310	9-4-09	201 KAR 11:230		
Amended	2061-A		Amended	143	
As Amended	2302		As Amended	565	10-02-09
103 KAR 3:040			201 KAR 11:250		
Amended	1968		Amended	433	
As Amended	2021-A	5-7-10	As Amended	1014	
103 KAR 3:050			As Amended	1436	2-5-10
Amended	134		201 KAR 11:300		
As Amended	560	10-02-09	Amended	434	
103 KAR 5:180	1391		As Amended	1014	12-4-09
Amended	2082-M		201 KAR 11:450		
As Amended	2028-A	5-7-10	Amended	435	
103 KAR 5:190	1394-M		As Amended	1015	12-4-09
As Amended	2040-A	4-2-10	201 KAR 12:105		
103 KAR 15:110			Amended	147	
Amended	1553		As Amended	1016	12-4-09
As Amended	2042-M	4-2-10	201 KAR 14:056 (r)	1143	3-5-10
103 KAR 15:120	1554		201 KAR 14:105		
As Amended	2043-M	4-2-10	Amended	437	
103 KAR 15:140			As Amended	779	11-6-09
Amended	1519		201 KAR 16:030		
As Amended	2044-M	4-2-10	Amended	2353	
103 KAR 17:150	704		201 KAR 17:011		
As Amended	1011	12-4-09	Amended	839	
103 KAR 18:110			As Amended	1437	2-5-10
Amended	1522		201 KAR 17:012		
As Amended	2046-M	4-2-10	Amended	841	
103 KAR 31:310	2003		As Amended	1438	2-5-10
103 KAR 43:310			201 KAR 17:025		
Amendment	1977		Amended	843	
As Amended	2031-A	5-7-10	As Amended	1439	2-5-10
103 KAR 44:130	706		201 KAR 17:027		
As Amended	1012	12-4-09	Amended	845	
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Amended	1301		As Amended	1905	3-5-10
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201 KAR 11:121			Amended	1304	3-5-10
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As Amended	782	10-21-09	Amended	639	12-4-09
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Amended	527		As Amended	1018	12-4-09
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Amended	1984		Amended	642	
Amended	2031-A	5-7-10	As Amended	1018	12-4-09
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302 KAR 100:030 As Amended	324	(See 35 Ky.R.) 8-28-09	401 KAR 11:010 Amended	450	
307 KAR 8:010 As Amended	708		Amended	1049	2-5-10
307 KAR 9:010 As Amended	1021	12-4-09	Amended	2094	
401 KAR 5:002 Amended	954		401 KAR 11:020 Amended	452	
401 KAR 5:045 Amended	1201	1-4-10	Amended	1051	2-5-10
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401 KAR 8:010 As Amended	822	11-17-09	Amended	1059	
Amended	579	(See 35 Ky.R.) 9-25-09	As Amended	1460	2-5-10 (See 35 Ky.R.)
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501 KAR 16:330	1566		Amended	1527	
Amended	2096-M		As Amended	2058-M	4-2-10
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Withdrawn		9-4-09	As Amended	1217	1-4-10
Amended	919	2-5-10	703 KAR 5:060		
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503 KAR 1:140			Amended	159	
Amended	1989		As Amended	1024	9-14-09
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Amended	2373		704 KAR 4:020		
503 KAR 3:040			Amended	653	
Amended	2379		As Amended	1218	1-4-10
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Amended	2383		Amended	1334	
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Amended	921		As Amended	2061-M	4-2-10
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603 KAR 4:045			Amended	926	1-4-10
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Amended	165		Amended	1995	
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Amended	169		Amended	668	
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803 KAR 2:417			Amended	211	
Amended	179		As Amended	603	
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Amended	182		As Amended	68	7-31-09
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803 KAR 2:500			Amended	669	
Amended	184		Withdrawn		9-30-09
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803 KAR 30:010			Withdrawn		3-26-10
Amended	2238		Amended	2244	
804 KAR 11:030			810 KAR 1:026		(See 35 Ky.R.)
Amended	2112-A		As Amended	71	7-31-09
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805 KAR 1:030			Withdrawn		3-17-10
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805 KAR 1:070			Amended	213	
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805 KAR 1:200			Amended	676	Withdrawn
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Amended	1062		As Amended	1035	12-4-09
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Amended	658		As Amended	1037	12-4-09
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806 KAR 6:100			Amended	1126	
Amended	201		As Amended	1488	2-5-10
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Amended	1350		Amended	224	
As Amended	1928	3-5-10	As Amended	614	
815 KAR 8:040			As Amended	802	9-24-09
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815 KAR 8:041(r)		(See 36 Ky.R.)	As Amended	325	8-12-09
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815 KAR 8:050	1400		900 KAR 6:020		
As Amended	1930	3-5-10	Amended	2256	
815 KAR 8:060	1400		900 KAR 6:030		
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815 KAR 8:070	2004		900 KAR 6:050		
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815 KAR 8:090	2008		900 KAR 6:060	232	
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815 KAR 10:060		(See 35 Ky.R.)	Amended	2258	
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Amended	1352	3-5-10	900 KAR 6:115	255	
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As Amended	93	7-29-09	900 KAR 6:125	260	
815 KAR 20:130		(See 35 Ky.R.)	900 KAR 7:030		(See 35 Ky.R.)
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815 KAR 20:170		(See 35 Ky.R.)	Amended	1356	3-5-10
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815 KAR 20:191			Recodified from 902 KAR 19:030		6-16-09
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As Amended	609	10-2-09	Recodified as 900 KAR 7:040		6-16-09
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(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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150.400	301 KAR 2:049	157.617	750 KAR 1:010

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157.622	750 KAR 1:010		11 KAR 4:080
158.030	702 KAR 7:125	164.753	11 KAR 3:100
158.060	702 KAR 7:125		11 KAR 4:080
	702 KAR 7:140		11 KAR 5:145
158.070	702 KAR 7:125		11 KAR 8:030
	702 KAR 7:140	164.769	11 KAR 4:080
158.100	702 KAR 7:125		11 KAR 8:030
158.240	702 KAR 7:125	164.780	11 KAR 4:080
158.645	702 KAR 5:060	164.785	11 KAR 4:080
158.6451	16 KAR 2:010	164.7535	11 KAR 4:080
	703 KAR 5:060		11 KAR 5:145
158.6453	703 KAR 5:060	164.7889	11 KAR 5:145
	703 KAR 5:080	164.945	13 KAR 1:020
	703 KAR 5:180		13 KAR 1:050
158.6455	703 KAR 5:060	164.946	13 KAR 1:020
	703 KAR 5:080		13 KAR 1:050
	703 KAR 5:180	164.947	13 KAR 1:050
159.010	702 KAR 7:125	164.992	13 KAR 1:020
159.030	702 KAR 7:125		13 KAR 1:050
159.035	702 KAR 7:125	165A.320	13 KAR 1:020
159.140	702 KAR 7:125	171.250	725 KAR 2:060
159.170	702 KAR 7:125		725 KAR 2:070
160.105	702 KAR 3:030	171.260	725 KAR 2:060
160.345	702 KAR 3:246		725 KAR 2:070
160.346	703 KAR 5:180	171.270	725 KAR 2:060
160.613-160.617	103 KAR 3:010		725 KAR 2:070
	103 KAR 3:020	171.420	725 KAR 1:061
160.613-160.617	103 KAR 3:020	171.450	725 KAR 1:020
160.6154(3)	103 KAR 3:010		725 KAR 1:061
161.020	13 KAR 1:050	171.470	725 KAR 1:025
	16 KAR 2:010	171.480	725 KAR 1:025
	16 KAR 2:120	171.500	725 KAR 1:025
	16 KAR 2:200	171.520	725 KAR 1:025
	16 KAR 8:030	171.600	725 KAR 1:020
161.028	16 KAR 2:010	171.670	725 KAR 1:020
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	16 KAR 8:030	186.018	601 KAR 2:020
161.030	16 KAR 2:010	186.020	601 KAR 23:010
	16 KAR 2:120	186.115	601 KAR 23:010
	16 KAR 2:200	186.570	921 KAR 1:410
	16 KAR 8:030	186A	601 KAR 9:130
161.100	16 KAR 2:120	186A.170	601 KAR 23:010
161.095	16 KAR 8:030	186A.510	601 KAR 23:010
161.145	704 KAR 4:020	186A.535	601 KAR 23:010
161.200	702 KAR 7:125	187.310	601 KAR 1:220
161.400	102 KAR 1:160		601 KAR 2:020
161.520	102 KAR 1:310	189.230	603 KAR 5:230
161.605	780 KAR 3:020	189.337	603 KAR 4:045
161.630	102 KAR 1:160	189A.050	910 KAR 3:030
161.655	102 KAR 1:310	189A.400-189A.460	601 KAR 12:060
161.661	102 KAR 1:310	194A.005	920 KAR 1:070
161.663	102 KAR 1:310		920 KAR 1:090
161.700	921 KAR 1:410		922 KAR 1:320
161.705	102 KAR 1:160	194A.030	900 KAR 5:050
161.716	102 KAR 1:225		911 KAR 1:085
161.1211	16 KAR 2:120		920 KAR 1:070
	16 KAR 8:030		920 KAR 1:090
161.1221	16 KAR 2:120		922 KAR 1:320
163.500	920 KAR 1:070	194A.060	910 KAR 1:150
163.506	920 KAR 1:070		910 KAR 1:160
164A.325	11 KAR 12:060		910 KAR 1:240
164A.330	13 KAR 2:045		920 KAR 1:070
164A.350	11 KAR 12:060		921 KAR 2:530E
164.020	13 KAR 1:020		922 KAR 2:020
	13 KAR 2:045	194A.700	910 KAR 1:150
164.030	13 KAR 2:045		910 KAR 1:160
164.518	11 KAR 4:080	194A-729	910 KAR 1:240
164.740	11 KAR 8:030	195.020	787 KAR 2:020
164.744	11 KAR 3:100	196	501 KAR 6:020
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	501 KAR 16:310		815 KAR 8:050
	501 KAR 16:320		815 KAR 8:060
	501 KAR 16:330	198B.700	815 KAR 6:010
196.070	501 KAR 16:340	198B.706	815 KAR 6:020
	501 KAR 16:001		815 KAR 6:010
	501 KAR 16:290	198B.712	815 KAR 6:010
	501 KAR 16:300	198B.714	815 KAR 6:010
	501 KAR 16:310	198B.722	815 KAR 6:010
	501 KAR 16:320	198B.724	815 KAR 6:010
	501 KAR 16:330	198B.990	815 KAR 7:120
	501 KAR 16:340		815 KAR 7:125
196.180	501 KAR 16:001	198B.6671	815 KAR 8:070
	501 KAR 16:310		815 KAR 8:080
	501 KAR 16:320		815 KAR 8:090
	501 KAR 16:330	198B.6672	815 KAR 8:070
	501 KAR 16:340		815 KAR 8:080
		198B.6673	815 KAR 8:070
	501 KAR 16:290		815 KAR 8:080
	501 KAR 16:300	198B.6674	815 KAR 8:070
197	501 KAR 6:020		815 KAR 8:080
	501 KAR 6:999	198B.6675	815 KAR 8:070
197.410	501 KAR 1:030		815 KAR 8:080
198B.010	815 KAR 7:120	198B.6676	815 KAR 8:070
	815 KAR 7:125		815 KAR 8:080
198B.040	815 KAR 7:070	198B.6677	815 KAR 8:070
	815 KAR 7:120		815 KAR 8:080
	815 KAR 7:125	198B.6678	815 KAR 8:070
198B.050	815 KAR 7:070		815 KAR 8:080
	815 KAR 7:120	199.011	910 KAR 1:260
	815 KAR 7:125	199.500	922 KAR 1:060
198B.060	815 KAR 7:070	199.502	922 KAR 1:060
	815 KAR 7:120	199.555	922 KAR 1:060
	815 KAR 7:125	199.557	922 KAR 1:060
198B.080	815 KAR 7:120		922 KAR 1:320
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198B.090	815 KAR 7:070	199.894	922 KAR 2:160
198B.095	815 KAR 7:070	199.896	922 KAR 2:160
198B.110	815 KAR 7:120	199.898	922 KAR 2:160
	815 KAR 7:125	199.8982	922 KAR 2:160
198B.260	815 KAR 7:120	199.899	922 KAR 2:160
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198B.650	815 KAR 8:010	200.460-200.499	911 KAR 1:085
	815 KAR 8:020	205.010	910 KAR 1:150
198B.654	815 KAR 8:010		910 KAR 1:160
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	815 KAR 8:070	205.200	921 KAR 2:017
198B.656	815 KAR 8:010	205.201	910 KAR 1:150
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	815 KAR 8:090	205.203	910 KAR 1:160
198B.658	815 KAR 8:010	205.204	910 KAR 1:160
	815 KAR 8:020	205.211	921 KAR 2:017
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	815 KAR 8:090	205.455	910 KAR 1:150
198B.660	815 KAR 8:010		910 KAR 1:160
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	815 KAR 8:050	205.460	910 KAR 1:160
	815 KAR 8:060	205.465	910 KAR 1:160
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198B.662	815 KAR 8:010	205.594	921 KAR 1:410
	815 KAR 8:020	205.595	921 KAR 1:410
198B.664	815 KAR 8:010	205.639	907 KAR 3:183
	815 KAR 8:020	205.640	907 KAR 3:183
	815 KAR 8:050	205.705	921 KAR 1:380
	815 KAR 8:060	205.710-205.800	921 KAR 1:380
	815 KAR 8:090		921 KAR 1:400
198B.666	815 KAR 8:041	205.710-205.802	921 KAR 1:410
198B.672	815 KAR 8:050	205.745	103 KAR 3:010
	815 KAR 8:060	205.900	910 KAR 3:030
198B.676	815 KAR 8:010	205.992	921 KAR 1:380
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205.2003	921 KAR 2:017		900 KAR 6:105
209.020	922 KAR 1:320		900 KAR 6:115
209.030	910 KAR 1:160		900 KAR 6:120
	910 KAR 1:160		900 KAR 6:125
	910 KAR 1:240	216B.990	900 KAR 6:030
209.160	103 KAR 3:010		900 KAR 6:051
209A.020	922 KAR 1:320		900 KAR 6:055
210.290	910 KAR 2:051		900 KAR 6:065
	922 KAR 5:061		900 KAR 6:080
211.350-211.392	401 KAR 8:020		900 KAR 6:100
211.470-211.478	910 KAR 3:030		900 KAR 6:105
211.647	911 KAR 1:085		900 KAR 6:115
213.046	911 KAR 1:085		900 KAR 6:120
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214.036	922 KAR 2:160	216.2970	911 KAR 1:085
216.300	910 KAR 1:240	218A.1431	502 KAR 47.010
216.595	910 KAR 1:240	220.080-200-120	505 KAR 1:160
216.787	910 KAR 1:150	223.160-220	401 KAR 8:020
216.789	910 KAR 1:240		401 KAR 11:001
216.793	910 KAR 1:240		401 KAR 11:010
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216B.010	900 KAR 6:060		401 KAR 11:040
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	900 KAR 6:075	223.180	401 KAR 8:030
	900 KAR 6:085	223.190	401 KAR 8:030
	900 KAR 6:090	223.200	401 KAR 8:030
	900 KAR 6:095	223.210	401 KAR 8:030
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216B.062	900 KAR 6:060		401 KAR 5:310
216B.065	900 KAR 6:110		401 KAR 11:001
216B.066	900 KAR 6:110		401 KAR 51:001
216B.085	900 KAR 6:090	224.01-070	401 KAR 5:070
216B.086	900 KAR 6:090		401 KAR 5:075
216B.090	900 KAR 6:090	224.01-310	103 KAR 3:020
216B.095	900 KAR 6:075	224.01-400	401 KAR 5:070
216B.615	900 KAR 6:085		401 KAR 5:075
216B.990	900 KAR 6:060	224.01-410	502 KAR 47.010
	900 KAR 6:070	224.10-100	401 KAR 8:020
	900 KAR 6:075		401 KAR 8:040
	900 KAR 6:085		401 KAR 8:070
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	900 KAR 6:051		401 KAR 51:001
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216B.330-216B.339	900 KAR 6:051		401 KAR 8:070
	900 KAR 6:055		401 KAR 8:150
	900 KAR 6:065		401 KAR 8:200
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	900 KAR 6:100		401 KAR 8:510
	900 KAR 6:105		401 KAR 8:550
	900 KAR 6:115		401 KAR 11:001
	900 KAR 6:120		401 KAR 11:010
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216B.455	900 KAR 6:030		401 KAR 11:040
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224.10-470	401 KAR 5:075		811 KAR 1:070
224.16-050	401 KAR 8:020	230.300	810 KAR 1:025
224.18-100	401 KAR 5:065		810 KAR 1:037
224.18-760	401 KAR 5:080		811 KAR 1:037
224.20-100	401 KAR 60:005		811 KAR 1:070
	401 KAR 60:671	230.310	810 KAR 1:025
224.20-110	31 KAR 6:010		810 KAR 1:100
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	401 KAR 60:671	230.290	811 KAR 1:037
224.70-100	31 KAR 6:010	230.300	811 KAR 1:037
	401 KAR 5:070	230.320	810 KAR 1:025
	401 KAR 5:075		810 KAR 1:037
	401 KAR 5:310		810 KAR 1:100
	401 KAR 60:005		811 KAR 1:037
224.70-110	31 KAR 6:010		811 KAR 1:070
	401 KAR 5:310		811 KAR 1:230
224.70-120	401 KAR 5:070		811 KAR 2:130
	401 KAR 5:075	230.330	810 KAR 1:100
224.73-110	401 KAR 11:001		811 KAR 1:230
	401 KAR 11:010		811 KAR 2:130
	401 KAR 11:020	234.321	103 KAR 3:010
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	401 KAR 11:050	235.990	301 KAR 1:015
224.99-010	401 KAR 5:070	237.110	301 KAR 2:172
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227A.040	815 KAR 35:100	243.710	103 KAR 3:010
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227A.060	815 KAR 35:060	243.850	103 KAR 3:010
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227A.100	815 KAR 35:060	247.920	103 KAR 3:020
	815 KAR 35:100	248.756	103 KAR 3:010
227.300	815 KAR 7:120	260.165	302 KAR 39:020
227.550	815 KAR 7:120	260.166	302 KAR 39:020
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	815 KAR 25:080	260.168	302 KAR 39:020
227.560	815 KAR 25:080	260.175	302 KAR 39:020
227.570	815 KAR 25:080	273.405-273.453	922 KAR 6:010
227.580	815 KAR 25:080	278.548	920 KAR 1:070
227.590	815 KAR 25:080	299.530	103 KAR 3:010
	815 KAR 25:100	301.1	921 KAR 1:380
227.600	815 KAR 25:080	302.30	921 KAR 1:380
227.630	815 KAR 25:080	302.31	921 KAR 1:380
227.640	815 KAR 25:100	302.33-302.36	921 KAR 1:380
227.990	815 KAR 25:080	302.50	921 KAR 1:380
230.215	810 KAR 1:004	302.65	921 KAR 1:380
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230.240	811 KAR 1:015		806 KAR 10:050
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230.280	811 KAR 1:070		806 KAR 6:100
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304.14-190	806 KAR 14:005	314.041	201 KAR 20:230
304.15-020	806 KAR 14:005		201 KAR 20:240
304.15-700	806 KAR 14:005		201 KAR 20:370
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304.06	806 KAR 3:150	314.091	201 KAR 20:161
304.07	806 KAR 3:150		201 KAR 20:370
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304.6-150	806 KAR 6:100	314.137	201 KAR 20:470
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304.33-030	806 KAR 17:570	318.200	201 KAR 16:030
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304.37	806 KAR 3:150	321.193	201 KAR 16:030
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309.1315	201 KAR 34:010	324A	201 KAR 30:010
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309.1335	201 KAR 34:020		201 KAR 30:030
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309.133	201 KAR 34:010	324A.020	201 KAR 30:070
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309.138	201 KAR 34:050		201 KAR 30:050
309.138	201 KAR 34:020	324A.040	201 KAR 30:050
309.300-309.319	920 KAR 1:070	324A.040	201 KAR 30:030
310.021	201 KAR 33:015	324A.050	201 KAR 30:070
310.031	201 KAR 33:015	324A.052	201 KAR 30:030
310.041	201 KAR 33:010	324.046	201 KAR 11:230
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310.042	201 KAR 33:050	324.085	201 KAR 11:230
310.050	201 KAR 33:020	324.090	201 KAR 11:230
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