

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(Amended at ARRS Committee)

416 KAR 1:020. Equipment Revolving Loan Program.

RELATES TO: KRS Chapter 45A, 56, 61.805 – 61.850, 262.610 - 262.650, 262.660, 355.9-525, Chapter 424

STATUTORY AUTHORITY: KRS 262.090(4), 262.610, 262.660(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 262.660(1) authorizes the Soil and Water Conservation Commission to promulgate administrative regulations governing the administration of the Equipment Revolving Loan Fund as expressed in KRS 262.610 through 262.650. This administrative regulation establishes the requirements and procedures for participation in the Equipment Revolving Loan Program.

Section 1. Applicability.

- (1) The provisions of this administrative regulation shall apply to persons and conservation districts applying for Equipment Revolving Loan Program funding for heavy or specialized equipment and infrastructure.
- (2) The Equipment Revolving Loan Program shall be limited to the:
 - (a) Purchase cost of heavy or specialized equipment used for conserving soil resources, prevention and control of soil erosion, and conservation and protection of water resources related to those purposes; and
 - (b) Purchase or lease costs for infrastructure, including costs of improvements to infrastructure, if sought by a conservation district.
- (3) The Equipment Revolving Loan Program shall not be used to reimburse for previous purchases of equipment or infrastructure.
- (4) Equipment purchased using funds from the Equipment Revolving Loan Program shall not be used for:
 - (a) Activities that do not comply with subsection (2)(a) of this section; or
 - (b) Clear cutting operations or strip mining activities.

Section 2. General Requirements.

- (1) Conservation districts, or a district jointly with a person residing within the district, that purchase heavy or specialized equipment using funds from the Equipment Revolving Loan Program shall comply with the requirements in paragraphs (a) through (e) of this subsection.
 - (a) A person residing within the district shall be the primary applicant if applying jointly with a conservation district. If a person residing within the district is the primary applicant, the district shall procure the equipment and execute a lease agreement with the person.
 - (b) Any two (2) or more conservation districts may combine efforts to purchase an eligible piece of equipment, with one (1) district designated as the primary applicant.
 - (c) The primary applicant shall provide one-third (1/3) the amount of the total cost of the equipment.
 - (d) The district shall adhere to the provisions in KRS Chapter 45A.
 - (e) All equipment shall be new, or warrantied as new, from a licensed equipment dealer.
- (2) Conservation districts that use funds from the Equipment Revolving Loan Program for infrastructure shall:
 - (a) Adhere to the provisions in KRS Chapters 45A and 56;

- (b) Provide, at a minimum, ten (10) percent of the total purchase cost or lease payments;
 - (c) Pay for all necessary property taxes and maintain infrastructure; and
 - (d) Not convey or encumber any interest in infrastructure if the division holds title to the infrastructure.
- (3) Conservation districts that are also the primary applicant for infrastructure may:
- (a) Add costs incurred for completing Finance and Administration Cabinet requirements pursuant to KRS Chapter 56 to the total loan amount advanced by the division. Those funds shall be included in the total funds the primary applicant agrees to repay; and
 - (b) Sublease portions of purchased infrastructure that are not essential to the operation of the district to a capable party or vendor, with the district maintaining primary occupancy of the infrastructure. The primary applicant shall ensure that taxes and insurance requirements shall be maintained.
- (4) Districts shall grant access to the division, Finance and Administration Cabinet, and Auditor of Public Accounts to any books, documents, papers, records, or other evidence directly related to the loan for the purpose of financial audit or program review.
- (5) Any legal action brought to enforce the terms of a promissory note or loan shall be filed in a court in Franklin County, Kentucky.

Section 3. Equipment Revolving Loan Program Application Procedures.

- (1) Conservation districts, or a district applying jointly with a person residing within the district, seeking funding for the purchase of heavy or specialized equipment, or districts seeking funding for infrastructure shall apply to the Soil and Water Conservation Commission by submitting a completed Conservation District Equipment Loan Application, DOC-01, to the Division of Conservation.
- (2) Prior to applying to the commission, funding requests for equipment and infrastructure shall be voted upon by the board of supervisors for a district at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 through 61.850.
- (3) Upon district approval pursuant to subsection (2) of this section, applications shall be submitted in accordance with subsections (4) through (6) of this section.
- (4) A district requesting funding for heavy or specialized equipment shall:
- (a) Complete a Conservation District Equipment Loan Application, DOC-01, which shall include a copy of the district's most recent Annual Financial Report, a minimum of three (3) bids for each piece of equipment, and documentation demonstrating how the model procurement code shall be followed; and
 - (b) Submit completed applications to the division. If two (2) or more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one (1) application package, including all required documentation, to the division.
- (5) A district requesting funding jointly with a person residing within the district for heavy or specialized equipment shall:
- (a) Complete a Conservation District Equipment Loan Application, DOC-01, which shall include a copy of the district's most recent Annual Financial Report and documentation demonstrating how the model procurement code shall be followed;
 - (b) Require the person residing within the district to complete and submit a Joint Equipment Loan Application, DOC-02, which shall include a copy of the person's credit report, and a minimum of three (3) bids for each piece of equipment; and
 - (c) Submit applications, including the required documentation, from all parties in one (1) application package to the division.
- (6) A district requesting funding for infrastructure shall:

- (a) Complete an Infrastructure Equipment Loan Application, DOC-03, which shall include a copy of the district's most recent Annual Financial Report, current Annual Budget, and documentation demonstrating how the model procurement code shall be followed; and
- (b) Submit completed applications to the division. If two (2) or more districts are applying jointly, each district shall complete an application. The district designated as the primary applicant shall submit applications from all parties in one (1) application package, including all required documentation, to the division.
- (7) The division shall review submitted applications for administrative completeness.
 - (a) A district shall be notified of application deficiencies and have the opportunity to make corrections.
 - (b) Complete applications shall be referred to the commission for consideration.
- (8) The commission shall consider the proposed use of the equipment or infrastructure, the district's financial ability to repay the loan, and the district's reporting and payment history in considering application approval.
- (9) A district shall be notified of the commission's final decision on the request for funds from the Equipment Revolving Loan Program.
- (10) For loans on heavy or specialized equipment, the district shall submit to the division:
 - (a) The signed loan contract;
 - (b) A filing fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer; and
 - (c) In cases in which the district applies jointly with a person residing within the district, the legally executed lease agreement in accordance with Section 2(1)(a) of this administrative regulation.
- (11) Infrastructure loans shall be contingent upon the district complying with the Finance and Administration Cabinet requirements pursuant to KRS Chapters 45A and 56.
- (12) Upon completion of the requirements established in subsections (9) and (10) of this section, the division shall file:
 - (a) A lien on purchased equipment with the Kentucky Secretary of State office; and
 - (b) Titles to infrastructure at the courthouse in the county where the infrastructure project is located.

Section 4. Interest Rates.

- (1) Loan interest rates shall be determined by the Soil and Water Conservation Commission.
- (2)
 - (a) The commission may adjust interest rates for new loans at each commission meeting.
 - (b) Interest rates shall not be adjusted by the commission for open loans.
- (3) The factors in paragraphs (a) and (b) of this subsection shall be considered by the commission for recommending an interest rate adjustment, and by the Commissioner of the Department for Natural Resources for making the final determination on the interest rate adjustment. Factors shall include:
 - (a) The available balance in the fund; and
 - (b) The current interest rate as established by the Federal Open Market Committee.

Section 5. Loan Repayment Terms.

- (1) Repayment terms for equipment purchases shall be:
 - (a) Three (3) to five (5) years for loans of less than \$100,000; or
 - (b) Five (5) to seven (7) years for loans over \$100,000.
- (2) Repayment terms for infrastructure shall be determined by the commission based on the district's financial ability to repay the loan.

(3) Monthly loan payments shall be submitted to the division by the tenth day of each month accompanied by the Equipment Loan Monthly Report, DOC-04, in accordance with Section 7(6) of this administrative regulation. Loan payments shall be submitted by check made payable to the Kentucky State Treasurer.

(4) Repayment penalties shall be applied if a loan is paid off in fewer than eighteen (18) months. The calculated penalty shall be the amount of interest lost by the early payoff.

(5) If a person fails to submit monthly payments under a joint application, the district shall be responsible for delinquent payments.

Section 6. Insurance Requirements.

(1) The primary applicant purchasing equipment using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.

(a) Insurance coverage for property or assets against all risk of physical loss or damage, including flood and rising water, to the equipment. The insurance shall be for the full replacement value of the equipment, parts, attachments, and accessories purchased with the Equipment Revolving Loan Program funds, regardless of where the equipment is stored. The primary applicant shall be responsible for the total value of the loan even in the event of loss.

(b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$500,000 per occurrence.

(2) Districts purchasing infrastructure using funds from the Equipment Revolving Loan Program shall carry property insurance coverage in accordance with paragraphs (a) and (b) of this subsection.

(a) Insurance coverage for real property against all risk of physical loss or damage, including flood and rising water, to the infrastructure. The insurance shall be for the full replacement value of the infrastructure purchased with the Equipment Revolving Loan Program funds. The division and primary applicant shall receive remuneration in proportion to the amount of equity each party holds in the infrastructure at time of loss. The primary applicant shall be responsible for the total value of the loan even in the event of loss; and

(b) Liability coverage, to include bodily injury and property damage, with a combined single limit of a minimum of \$1 million per occurrence.

(3) All insurance policies shall include the Commonwealth of Kentucky as an additional insured and loss payee.

(4) Insurance coverage shall be maintained until the loan is fully amortized or until the district or primary applicant has been formally released of further responsibility by the division.

(5) Copies of all insurance policies, endorsements, and certificates of renewal shall be submitted to the division within sixty (60) days of issuance or amendment.

Section 7. Operational, Reporting, and Record Keeping Requirements.

(1) Equipment purchased using funds from the Equipment Revolving Loan Program shall meet the operational requirements in paragraphs (a) through (d) of this subsection. Equipment shall be:

(a) Operated within the district, or districts, identified in the loan contract unless the district or districts approve for the operation outside county boundaries;

(b) Advertised by publication in accordance with the provisions of KRS Chapter 424, at a minimum, annually to inform the public of availability for use.

1. The publication area shall be the district, or districts, identified in the loan contract.

2. The primary applicant shall be the responsible person for publishing advertisements.

3. If the primary applicant is a district or districts, alternative internet and publication procedures may be utilized if the requirements of KRS 424.145 are met;
 - (c) Made readily available for rental or hire by the public; and
 - (d) Rented or operated for a minimum of twenty (20) days within a six (6) month period.
- (2) Equipment shall not be used more than sixty-five (65) percent of the time on:
 - (a) Land owned by district supervisors or employees of the district if the district is the primary applicant; and
 - (b) Lands owned by the primary applicant if a district applies jointly with a person residing within the district.
- (3) Lease or rental fees on equipment shall be established sufficient to assist in amortization payments, operation and maintenance, operator costs, and transportation of equipment to jobs. Districts shall notify the commission within thirty (30) days of any changes to approved lease or rental fees.
- (4) Administrative fees may be charged to the person by the district, if a district applies jointly with a person residing within the district for equipment, not to exceed five (5) percent of the monthly amortization amount.
- (5) Equipment shall be maintained, kept in working order, and reasonably protected from the weather.
- (6) Reporting requirements for equipment and infrastructure loans shall be as established in paragraphs (a) and (b) of this subsection.
 - (a) A person residing within the district, who is the primary applicant of an equipment loan, shall document and report monthly to the district, at a minimum, the information in Section 5 of the Equipment Loan Monthly Report, DOC-04.
 - (b) A district shall complete and submit, to the division by the tenth day of each month, the Equipment Loan Monthly Report, DOC-04. If two (2) or more districts applied jointly, the district designated as the primary applicant shall complete and submit the Equipment Loan Monthly Report, DOC-04, to the division.
- (7) Districts using funding from the Equipment Revolving Loan Program shall maintain records on the:
 - (a) Description of the equipment or infrastructure;
 - (b) Terms of the purchase or lease;
 - (c) Terms of the loan;
 - (d) Description of insurance coverage and premiums paid;
 - (e) Major repairs and circumstances impairing the use of purchased equipment or infrastructure; and
 - (f) Dollar amount paid to the division for the purpose of amortizing the loan.

Section 8. Default on a Contract.

- (1) Failure to make payments over a three (3) month period or to comply with the requirements in accordance with Sections 5 through 7 of this administrative regulation shall constitute a default on a contract.
- (2) The division shall notify the primary applicant in writing of a default and describe the cause of the default with specificity.
 - (a) The notice shall provide the primary applicant with thirty (30) days from mailing to cure the default.
 - (b) The notice shall be complete upon mailing by certified mail, return receipt requested, to the mailing address listed on the application.
- (3) For equipment purchases:
 - (a) Resolutions and remedies for an uncured default shall be as established in subparagraphs 1. and 2. of this paragraph.

1. If a person residing within the district is the primary applicant, the district shall repossess equipment that was purchased using funds from the Equipment Revolving Loan Program. The district shall be responsible for delinquent payments in accordance with Section 5(5) of this administrative regulation and any remaining payments. Following repossession, the district shall:

- a. Lease the equipment to another person residing within the district with the approval of the commission based on the proposed use of the equipment and the financial ability to repay the loan;
- b. Enroll as the primary applicant; or
- c. Sell the equipment pursuant to KRS Chapter 45A.

2. If a district is the primary applicant, the district shall sell the equipment pursuant to KRS Chapter 45A.

(b) If a district fails to comply with paragraph (a) of this subsection, direct aid shall be withheld until the outstanding loan balance is paid.

(c)

1. A person aggrieved by the decision of the district to repossess equipment pursuant to paragraph (a)1. of this subsection may file a written appeal with the commission. An appeal shall be filed within thirty (30) days of the repossession and shall state the basis for the appeal.

2. Procedure for hearing appeal.

a. The commission shall notify the district and person that they may appear before the commission to present testimony or written documentation on the issues presented by the appeal. Any hearing for an appeal shall comply with KRS Chapter 13B.

b. The commission shall have 100 days to make a final decision and to notify the district and person.

3. Final decisions of the commission may be appealed by the district or person to a court in Franklin County, Kentucky.

(4) For infrastructure:

(a) Resolutions and remedies for an uncured default shall be as established in subparagraphs 1. and 2. of this paragraph.

1. Purchased infrastructure shall be disposed as surplus property pursuant to the provisions of KRS Chapters 45A and 56; or

2. Terminate the lease agreement.

(b) If the primary applicant fails to remedy any default on a contract:

1. The division shall notify the Finance and Administration Cabinet; and

2. Direct aid shall be withheld until the outstanding loan balance is paid.

(c) A district that is aggrieved by the Finance and Administration Cabinet's decision may seek a review of the decision. The review shall be conducted pursuant to KRS 45A.230.

Section 9. Loan Completion.

(1) Once the loan contract has been satisfied, the division shall issue a letter of completion formally releasing the loan.

(2) Upon receipt of a letter of completion:

(a) Purchased equipment and infrastructure shall be the property of the primary applicant;

(b) For infrastructure loans, the primary applicant shall file a transfer of title at the courthouse in the county where the infrastructure is located and shall take full possession of the infrastructure; or

(c) The primary applicant shall be responsible for meeting the requirements of lease agreement or terminate the lease agreement.

(3) The district shall:

(a) Maintain all records for equipment and infrastructure for at least five (5) years past the release of the title or termination of loan agreement; and

(b) Submit to the division, within ninety (90) days from the receipt of the letter of completion, all loan records related to the equipment or infrastructure, and for equipment purchases a lien termination fee in an amount established in KRS 355.9-525. The filing fee shall be made by check payable to the Kentucky State Treasurer.

(4) For equipment purchases, the division shall file a lien release with the Kentucky Secretary of State's office.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Conservation District Equipment Loan Application", DOC-01, December 2023;

(b) "Equipment Loan Monthly Report", DOC-04, December 2023;

(c) "Infrastructure Equipment Loan Application", DOC-03, December 2023; and

(d) "Joint Equipment Loan Application", DOC-02, December 2023.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time.

(3) This material may also be obtained at the Division of Conservation's Web site at <https://eec.ky.gov/Natural-Resources/Conservation/Pages/Equipment-Revolving-Loan-Program.aspx>.

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