ARRS - JULY 2005 TENTATIVE AGENDA
REGULATION REVIEW PROCEDURE

EMERGENCIES:
Department of Revenue ........................................ 4
Justice and Public Safety Cabinet .......................... 8
EPPC, Office of Insurance ...................................... 9

AS AMENDED:
Kentucky Higher Education Assistance Authority .......... 14
Education Professional Standards Board .................... 24
Teachers' Retirement System .................................. 45
Finance and Administration Cabinet ....................... 47
Board of Professional Engineers and Land Surveyors .... 52
EPPC, Department of Fish and Wildlife Resources ....... 53
EPPC, Division of Air Quality ................................ 61
Department of Corrections ..................................... 65
Education Cabinet ................................................ 74
Council on Postsecondary Education ....................... 77
EPPC, Office of Housing, Buildings and Construction ... 77
Cabinet for Health and Family Services .................... 88

AMENDED AFTER COMMENTS:
Council on Postsecondary Education ....................... 97
EPPC, Division of Water ....................................... 101
Council on Postsecondary Education ....................... 103
Cabinet for Health and Family Services .................... 104

PROPOSED AMENDMENTS RECEIVED THROUGH NOON.
JUNE 15, 2005:
Kentucky Higher Education Assistance Authority .......... 109
Department of Revenue ....................................... 112
Finance and Administration Cabinet ....................... 116
Real Estate Appraisers Board ................................ 121
Department of Corrections .................................... 123
Education Cabinet .............................................. 127
EPPC, Department of Labor ................................... 142
EPPC, Office of Insurance ..................................... 156
Cabinet for Health and Family Services .................... 164

NEW ADMINISTRATIVE REGULATIONS RECEIVED
THROUGH NOON, JUNE 15, 2005:
Department of Revenue ....................................... 169
Finance and Administration Cabinet ....................... 169
Board of Licensure for Occupational Therapy ............ 173
Department of Corrections .................................... 174
EPPC, Office of Workers' Claims ............................ 175
EPPC, Office of Insurance ..................................... 176
Cabinet for Health and Family Services .................... 178

JUNE 14, 2005 MINUTES OF THE ARRS ..................... 181
OTHER COMMITTEE REPORTS ................................ 188

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates ............................... A-2
KRS Index ......................................................... A-6
Subject Index ..................................................... A-9

MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-
vively scheduled to meet July 12, 2005 at 10:00 a.m. in Room
149 of the Capitol Annex, Frankfort, Kentucky. See tentative
agenda on pages 1-2 of this Administrative Register.
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Title
806

Chapter
KAR
50:

Regulation
155

Cabinet, Department, Office, Division, Specific Board or Agency Major Function Regulation

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VOLUME 32, NUMBER 1 – JULY 1, 2005
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - JULY 12, 2005, at 10:00 a.m., Room 149 Annex

COUNCIL ON POSTSECONDARY EDUCATION
13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes. (Amended After Comments)

OFFICE OF THE ATTORNEY GENERAL

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Legislative Services

General Administration

Office of the Secretary

Ad Valorem Tax; Administration
200 KAR 5.080. Sponsorships

BOARD OF MEDICAL LICENSURE
201 KAR 9 018. Physician advertising. (Amended After Comments)

Real Estate Appraisers Board

GENERAL GOVERNMENT CABINET

Board
201 KAR 30.150. Education provider approval.
201 KAR 30.160. Standards for Instructors.
201 KAR 30.170. Evaluation of Instructors.
201 KAR 30.190. Education requirement for applications received after December 31, 2007.

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

Water Resources
401 KAR 4.010. Water withdrawal permits, criteria, reports. (Amended After Comments)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources

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

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

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

Reciprocity Requirements
405 KAR 12:001. Definitions for 405 KAR Chapter 12. (Not Amended After Comments) (Deferred from December 2003)

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

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

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

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

TRANSPORTATION CABINET
Department of Vehicle Regulation

Commercial Driver's License
601 KAR 11:010. Fees relating to commercial driver's licenses. (Deferred from June)

COUNCIL ON POSTSECONDARY EDUCATION
785 KAR 1.130. GED eligibility requirements. (Amended After Comments)

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Insurance

Workers' Compensation Self-Insured Groups
806 KAR 52 010 & E. Forms for application, security deposits and financial statements. (*E* expires 11/18/2005).

- 1 -
Harness Racing

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of State Fire Marshall

Manufactured Homes and Recreational Vehicles
815 KAR 25.080. Requirements for certifying manufactured home installers. (Deferred from May)

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General

Health Services and Facilities

Department for Medicaid Services
Office of the Commissioner

Medicaid Services
907 KAR 1:018 & E. Reimbursement for Drugs. ("E" expires 10/18/2005) (Amended After Comments)
907 KAR 1:019 & E. Outpatient pharmacy program. ("E" expires 8/18/2005) (Amended After Comments) (Deferred from June)

Division of Hospitals and Provider Operations

Medicaid Services
907 KAR 1.360 & E. Preventive and remedial public health services. ("E" expires 11/18/2005)

Department for Community Based Services
Division of Policy Development

Child Welfare
922 KAR 1 520 High risk supplement for resource homes.
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.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.
STATEMENT OF EMERGENCY
103 KAR 28:051E

Nature of the emergency: Sales and use tax administrative regulations need to be in conformity with the Streamlined Sales Tax Agreement upon implementation. The reasons an ordinary administrative regulation is not sufficient: Kentucky statutes have been revised regarding leasing of tangible personal property to conform to the streamline sales tax project. This administrative regulation needs to be updated to reflect those changes. This administrative regulation is considered an emergency for implementation purposes. It is necessary to update the administrative regulation immediately so that it is in agreement with the streamline sales tax project requirements. Failure to implement this administrative regulation by July 1, 2005, could have a significant adverse impact on GF receipts generated by sales tax for FY 06. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler not later than June 15.

ERNIE FLETCHER, Governor
ROBBIE RUDOLPH, Secretary

Finance and Administration Cabinet
Department of Revenue
Office of Sales and Excise Tax
(Emergency Amendment)

103 KAR 28:051E. Leases and rentals.

RELATES TO KRS 139.050, 139.090, 139.100, 139.105, 139.110, 139.120, 139.200, 139.210, 139.270, 139.280, 139.290, 139.310, 139.320, 139.330, 139.340, 139.410, 139.420, 139.430, 139.471, 139.484, 139.490, 139.532, 139.600, 139.620

STATUTORY AUTHORITY: [43A] KRS 131.130

EFFECTIVE: June 15, 2005

NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to leases and rentals of tangible personal property.

Section 1. Definitions. (1) "Property located at the place of business" means the location as indicated by an address for the property provided by the lessor that is available to the lessee from its records maintained in the ordinary course of business. Any address does not constitute bad faith. This location shall not be altered by the lessor without the consent of the lessee.

(b) "Truck and truck-tractors" means all the trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are operated under authority of a carrier authorized and registered by the United States Department of Transportation or another federal authority to operate in commerce.

(c) Aircraft that are operated under authority of a carrier authorized and registered by the United States Department of Transportation or another federal authority or a foreign authority to operate in commerce.

(d) Containers designed for use on and component parts or attachments to the items described in subsections (a) through (c) of this section.

Section 2. Registrants. Persons engaged in leasing or renting tangible personal property for use in Kentucky are retailers and shall register with the Department of Revenue to obtain a retail sales and use tax permit and report and pay the applicable tax derived from the gross lease or rental receipts. Each period for which a lease or rental is payable shall be considered a separate transaction. In determining a retailer's tax liability for the tax in accordance with KRS 139.110(1)(a).

Section 3. Gross Receipts. (1) Gross receipts from the lease or rental of tangible personal property shall include but are not limited to:

(a) The total amount of payments, or consideration received by the lessor from the lessee; and

(b) Payments made by the lessor to a third party for the benefit of the lessee which are required by the terms of the agreement; and

(c) All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement including finance or interest charges, property tax, and insurance charges.

(d) Charges by a lessor to a lessee for a separately-executed maintenance agreement, which is not a part of the lease or rental agreement, are not subject to tax.

Section 4. Tax Responsibility. (1) The retailer/lessor leasing or renting tangible personal property within this state is required to collect the sales tax from the customer/lessee.

(2) Every out-of-state retailer leasing or renting tangible personal property for storage, use or other consumption in this state is required to collect the tax from the purchaser and remit the tax on gross lease or rental receipts to the Department of Revenue.

(3) The lessee's responsibility for the sales tax is not relieved until payment of the amount due has been made to the Department of Revenue or to a retailer/lessor authorized to collect the Kentucky tax.

Section 5. Resale. (1) Lessors may execute a certificate to their suppliers for tangible personal property purchased exclusively for lease or rental.

(2) The purchase by lessors of parts and accessories which become part of the leased or rented property may also be purchased under a certificate, however, property purchased by the lessor to maintain leased or rented property is subject to the tax.

(3) Tangible personal property, purchased for resale without payment of the tax and to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for purposes other than lease or rental becomes subject to tax upon receipt. The tax is measured by the purchase price of the property and is in addition to the tax due on the lease or rental receipts.

(4) Tangible personal property purchased in part for lease or rental and in part for use shall not be purchased from a vendor under a certificate and is subject to tax.

(5) Retailers who purchase tangible personal property for out-of-state sale, but, while holding the property in their inventory, make use of the property in their business through lease or rental are responsible for the applicable tax to the lease or rental receipts.

(6) Tangible personal property purchased by a retailer engaged in leasing or renting the property may be eligible for a deduction from the retailer's gross lease or rental receipts for an amount equal to the purchase price of the property used exclusively for lease or rental if the retailer has paid the sales or use tax applicable to the purchase price of the property.

Section 6. Lease with an Exemption Certificate. A lessor of tangible personal property shall not include within the measure of the tax gross receipts from a lease or rental if the lessor takes from the lessee a certificate of exemption as evidence that the property
leased will be used in an exempt manner under the sales and use tax law.

Section 7. Motor Vehicles. (1) The lease or rental of motor vehicles, which are for use on the public highways and upon which any applicable tax levied under KRS 139:460 or KRS 139:463 has been paid, is not subject to the sales or use tax.

(2) Motor vehicles, which are not subject to the motor vehicle usage tax or the U-Drive-B tax, are subject to the sales and use tax unless another applicable exemption applies.

Section 8. Reciprocity. (1) The sales and use tax law provides for credit against any Kentucky use tax for state sales tax paid in another state which imposes a sales tax substantially identical to that of Kentucky.

(2) Out-of-state lessors who have collected sales tax on a lump-sum basis for their state will be able to receive credit for the amount paid that other state up to the amount due to Kentucky.

(3) Kentucky will tax any excess lease or rentals, relating to the lump-sum tax amounts.

(4) Reciprocity will apply to any tax due Kentucky on lease or rental receipts only if the reciprocal state has levied and is legally due the sales or use tax paid on the lease or rental receipts.

Section 9. Lease of Real, Tangible and Intangible Property. (1) If lease or rental activity involves the lease or rental of real tangible personal and intangible property, as the lease or rental of a business operation or establishment, the total amount of the lease or rental is subject to sales tax unless the amount applicable to the tangible personal property is separately stated.

(2) The amount separately stated for the tangible personal property shall not be less than the fair market lease or rental value for similar property for a similar rental or lease period.

(3) The lease or rental of tangible personal property between separate entities owned by the same or similar stockholders is subject to the tax unless otherwise exempted by the sales and use tax law.

(4) The tax is to be levied on the lease or rental amount charged or the fair market lease or rental amount, whichever is greater.

Section 10. General Sourcing Rules. (1) The lease or rental of tangible personal property, other than property identified in subsection (2), shall be according to the provisions of KRS 139:105(1).

(a) For a lease or rental that requires recurring periodic payments, the tax is paid in the period in which the payment is sourced as follows: according to the provisions of KRS 139:105(1).

(b) Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall not be altered by intermittent use at different locations. Intermittent use includes but is not limited to business property that accompanies employees on business trips and service calls.

(c) For a lease or rental that does not require recurring periodic payments, the payment is sourced as the same as a retail sale in accordance with the provisions of subsection (3) of this section.

(d) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(2) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the property location.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced in accordance with the provisions of subsection (1)(c) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) General rules—The lease or rental of tangible personal property, for a consideration in Kentucky, is treated as a sale or purchase of which are subject to the sales or use tax.

The term "lease or rental" means the grant to another of the right to use and possess tangible personal property for a period of time and for a consideration. The term "lease or rental" includes financial institutions by a final leasing institution in which a financial institution although title is transferred principally for the purpose of securing the lessor's financial interest. The term does not include the lease or rental of real property or a transaction which provides a service. The providing of a service is an action which includes both services and tangible personal property for a consideration where the performance of the service is the essential feature of the transaction. Real property is considered to be a tangible personal property for use in Kentucky. Kentucky is retailers who must register with the Revenue Cabinet to obtain a retail sales and use tax permit and report and pay the applicable tax derived from the gross lease or rental receipts.

(2) Transitory privilege effective July 1, 1990, the sales and use tax rate applicable to gross receipts from taxable lessors and rentals of tangible personal property is increased to six (6) percent. However, the five (5) percent tax rate shall continue past July 1, 1990 for those receipts derived from lease or rental agreements entered into on or before March 9, 1990. An exemption certificate is not required from the lessee for continuance of five (5) percent tax rate; but business records of the lessor shall be retained to document that the lease or rental agreement was entered into on or before March 9, 1990. In the absence of such records, the lessor's gross receipts from the lease or rental transaction shall be subject to the six (6) percent tax rate.

(3) Rosale—Tangible personal property purchased exclusively for lease or rental may be purchased for resale without payment of the tax at the time of purchase. Lessors must execute Revenue Form 51A1105, Rosale Certificate, to their suppliers. The purchase by lessors of parts and accessories which become part of the leased or rented property may also be purchased under a resale certificate. However, property purchased by a lessor to maintain leased or rented property of a lessor is subject to the tax. Tangible personal property purchased for resale without payment of the tax and to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for some purpose other than lease or rental becomes subject to tax upon such use. The tax is the responsibility of the retailer/lessor and is measured by the purchase price of the property and is in addition to the tax due on the lease or rental receipts. When tangible personal property is purchased in part for lease or rental and in part for use, such property may not be purchased from a vendor under a resale certificate and is subject to tax. Receipts from the lease or rental of such property that is purchased under a resale certificate for outright sale, but, while holding such property in their inventory, make use of the property in their business through lease or rental, are responsible for the tax applicable to such lease or rental receipts. When tangible personal property is purchased by a person for use in conducting a retail activity and has not been acquired for resale, the tax applies at the time of purchase if during the course of ownership of the property, lease or rental of the property occurs, such leases or rentals are subject to tax. The amount charged for any rooms, lodgings or accommodations furnished to transients by the operator of any apartment house, hotel, inn, motel, tourist camp or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration is subject to the sales tax. However, persons who rent such accommodations to guests for less than 31 consecutive days are not required to issue a resale certificate for the lease or rental of items such as: beds, bedding, other furniture and equipment. Business enterprises which furnish accommodations to transients are the consumers of such leased or rented tangible personal property. When tangible personal property has been purchased by a retailer engaged exclusively in leasing or renting such property and the retailer has paid the sales or use tax applicable to the purchase price of the property, a deduction may be taken from the retailer's gross lease or rental receipts for an amount equal to the purchase price of the property. The deduction is contingent upon the retailer using the property exclusively for lease or rental.

(4) Gross receipts—Gross receipts from the lease or rental of tangible personal property shall include the total amount of payment or payments received by the lessor from the lessee as well.
as payments paid by the lessee to a third party for the benefit of the lessor which are required by the terms of the agreement. Gross receipts from the lease or rental of tangible personal-property include amounts designated by the lease or rental agreement as finance or interest charges, and all other itemized charges with the sole exception being separately stated property-tax and insurance charges. Charges by a lessor to a lessee for a separately executed maintenance agreement which is not a part of the lease or rental agreement are subject to tax. Each period for which a lease or rental is payable shall be considered a complete transaction in determining a "retailer" responsible for the tax in accordance with KRS 414.110(1)(a).

(6) Tax responsibility. Every retailer leasing or renting tangible personal property within this state is responsible for the sales-tax applicable to gross lease or rental receipts. The retailer/lessor is required to collect the sales-tax from the consumer/lessee. Every out-of-state retailer leasing or renting tangible personal property for storage, use or other consumption in this state is required to collect the use-tax from the purchaser and remit the tax on gross lease or rental receipts to the Revenue Cabinet. The lessor's responsibility for the use-tax is not relieved until payment of the amount due has been made to the Revenue Cabinet or to a retailer/lessor authorized to collect the Kentucky tax.

Section 2. Taxable Leases or Rentals—Leases and rentals of all kinds of tangible personal property except motor vehicles and that property qualifying for exemptions provided in the sales and use tax law, are subject to the sales and use tax measured by the gross receipts derived from the lease or rental charge.

(1) Taxable leases or rentals include the following types of tangible personal property:

(a) Aircraft;
(b) Audio-visual equipment;
(c) Beverage and food dispensing equipment;
(d) Bicycles;
(e) Boats, canoes, houseboats and sailboats;
(f) Bowling pin-setting equipment;
(g) Campers that are not registered motor vehicles;
(h) Camping equipment;
(i) Carpet and rug-cleaning equipment;
(j) Construction equipment;
(k) Communications equipment;
(l) Computer hardware and software;
(m) Costumes;
(n) Formal wear;
(o) Garden and lawn equipment;
(p) Golf carts and clubs;
(q) Hospital equipment;
(r) Household appliances and furniture;
(s) Industrial equipment;
(t) Microphone and stage equipment;
(u) Musical instruments;
(v) Office machinery and equipment;
(w) Office trailers;
(x) Oxygen equipment;
(y) Party supplies;
(z) Physical therapy equipment;
(aa) Plants;
(bb) Portable buildings and sheds;
(cc) Portable foliage;
(dd) Riding horses, apparel and equipment;
(ee) Scaffolding;
(ff) Ski equipment;
(gg) Spraying equipment;
(hh) Telephones;
(ii) Televisors;
(jj) Tents;
(kk) Tools;
(ll) Video recorders and players;
(mm) Video tapes, cassettes and related items.

(2) The foregoing examples are for illustration and are not intended to be all inclusive. When lease or rental activity involves the lease or rental of real, tangible and intangible personal property, such as the lease or rental of a business operation or establishment, the total amount of the lease or rental receipts is subject to tax unless the amount applicable to the tangible personal property is separately stated. The amount separately stated for the tangible personal property cannot be less than the fair market lease or rental value of similar property for a similar lease or rental period. The lease or rental of tangible personal property between separate entities owned by the same or similar stockholders is subject to the tax unless otherwise exempted by the sales and use tax law. The tax is to be levied on the lease or rental amount charged or the fair market lease or rental amount, whichever is greater.

Section 3. Nontaxable Leases or Rentals. (1) The lease or rental of real property and the performance of a service do not represent the lease or rental of tangible personal property. Nontaxable receipts include but are not limited to the following:

(a) Charges made for the use of a miniature golf course or golf driving range;
(b) Charges made for the rental of safety deposit boxes;
(c) Charges made for laundering or dry-cleaning of apparel owned by customers;
(d) Charges made for the use by individuals of coin-operated laundry equipment;
(e) Charges made for the use of docks and docking facilities furnished for boats;
(f) Charges made for storage space in mini-warehouses;
(g) Charges made for the rental of parking spaces in parking lots or garages;
(h) Charges made for the lease or rental of office space or an office building;
(i) Charges made for the lease or rental of furnished and unfurnished apartments;
(j) Charges made for the rent of linens, uniforms, towels and diapers where their cleaning is the essence of the rental agreement;
(k) Charges made for the cleaning of wall-to-wall carpet;
(l) Charges made for lawn care service;
(m) Charges made for a construction contract for erecting, remodeling or repairing a building or other structure;
(n) Charges made for equipment and an operator to perform certain work specified by the customer where the customer does not take possession or have any direction or control over the physical operation of the work to be performed;
(o) Charges made for aircraft charters available to the general public;
(p) Charges made for use by individuals of amusement machines such as video games, pinball machines, etc.;
(q) Charges made for the use of lockers;
(r) Charges made for the use of tanning beds;
(s) Charges made for computer time-sharing;
(t) Charges made for the furnishing of space on utility poles for the attachment of cable television, telephone and utility lines.

(2) The foregoing partial list of nontaxable receipts must not be construed to have application beyond the circumstances presented. For example, if an individual enters a business establishment and makes use of a video game machine by inserting twenty-five (25) cents, the receipts from the charge are not taxable. However, the person who is utilizing the video machine in the business operation may lease or rent outright the machine from another person engaged in the business of leasing or renting such property. In this example, the amount or amounts paid to the video game machine owner/lessor by the business enterprise which made the machine available for use by the individual would represent taxable receipts from the lease or rental of tangible personal property.

Section 4. Exemptions. A lessor of tangible personal property should not include within the measure of the tax gross receipts from a lease or rental if the lessee takes from the purchaser a certificate of exemption as evidence that the property purchased will be used in an exempt manner under the sales and use tax laws. Sales and use tax exemptions for which the lessee may qualify include, for example, machinery for new and expanded industry, farm machinery, tangible personal-property leased for use-by-cust
tain religious, charitable, and educational institutions, historical sites, and units of the federal government, Kentucky state government and local governments within the state, and motion picture film rental and lease businesses. These businesses must comply with the provisions of the Kentucky statute that authorizes such activity.

When an out-of-state lessee leases tangible personal property from a Kentucky lessee, the lessee's records must clearly reflect the nature of the transaction. The lessee's records must reflect the amount of the lease or rental payment, the term of the lease or rental agreement, and the identification of the property leased or rented.

Section 6. Reciprocity. The sales and use tax law provides for credit against the Kentucky sales tax for states that have a comparable sales tax system and a similar sales tax base. The credit is limited to the amount of the sales and use tax paid in the state in which the property is located.

Section 7. Construction, Machinery, and Equipment. Persons engaged in the business of leasing or renting construction machinery and equipment are required to report information on the sales and use tax paid. However, the lessee's records must reflect the amount of the lease or rental payment, the term of the lease or rental agreement, and the identification of the property leased or rented.

The provisions of KRS 139.320 will apply to lessees of construction machinery and equipment brought into Kentucky by lease or rental. The lessee's records must reflect the amount of the lease or rental payment, the term of the lease or rental agreement, and the identification of the property leased or rented.

The provisions of KRS 139.320 will apply to lessees of construction machinery and equipment brought into Kentucky by lease or rental. The lessee's records must reflect the amount of the lease or rental payment, the term of the lease or rental agreement, and the identification of the property leased or rented.

The provisions of KRS 139.320 will apply to lessees of construction machinery and equipment brought into Kentucky by lease or rental. The lessee's records must reflect the amount of the lease or rental payment, the term of the lease or rental agreement, and the identification of the property leased or rented.

The provisions of KRS 139.320 will apply to lessees of construction machinery and equipment brought into Kentucky by lease or rental. The lessee's records must reflect the amount of the lease or rental payment, the term of the lease or rental agreement, and the identification of the property leased or rented.

The provisions of KRS 139.320 will apply to lessees of construction machinery and equipment brought into Kentucky by lease or rental. The lessee's records must reflect the amount of the lease or rental payment, the term of the lease or rental agreement, and the identification of the property leased or rented.
either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied. This emergency administrative regulation deals with sales and use tax, which is applied uniformly to all taxpayers by law.

STATEMENT OF EMERGENCY
501 KAR 6:240E

Nature of the emergency: The legislature established a new provision for home incarceration to assist with overcrowding in jails and prisons and directed that administrative regulations be promulgated to establish home incarceration program procedures. These emergency administrative regulations are necessary to meet an imminent threat to the public health, safety and welfare. The reasons an ordinary administrative regulation is not sufficient.

An ordinary administrative regulation will delay the implementation of the home incarceration program and prevent the placement of a number of inmates on home incarceration. This will necessarily prevent the transfer of prisoners from jails to the spaces made available in the prisons from home incarceration placements. This administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 1, 2005.

ERNIE FLETCHER, Governor
JOHN D. REES, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Emergency Administrative Regulation)

501 KAR 6:240E. Home Incarceration using an approved monitoring device.

RELATES TO: KRS Chapters 195, 197, 439, 532
EFFECTIVE: June 1, 2005
NECESSITY, FUNCTION, AND CONFORMANCE: KRS 196.035, 197.020, 439.470, and 532.260 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations concerning inmate release to home incarceration using an approved monitoring device and probation and parole supervision using an approved monitoring device. The policies and procedures relating to home incarceration and monitoring are incorporated by reference. This administrative regulation establishes the policies and procedures for the inmate release to home incarceration and monitoring of offenders on supervision by the Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device May 24, 2005" are incorporated by reference. These policies and procedures include:

25.12 Home Incarceration and Monitoring of Inmates
27-15-02 Curfew and Monitoring
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: May 20, 2005
FILED WITH LRC: June 1, 2005 at 4 p.m.

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker
(1) Provide a brief summary of.

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Department of Corrections' early release of inmates to home incarceration and monitoring and probation and parole supervision with electronic monitoring.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 532.260.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides the regulations required by KRS 532.260 to govern the review and approval of inmates for early release to home incarceration and monitoring and establishes the parameters of probation and parole supervision with electronic monitoring pursuant to KRS 439.470.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides direction to the review and approval process and in establishing how the requirements of the statute will be met for this type of early release. It provides the parameters of probation and parole supervision with electronic monitoring pursuant to KRS 439.470.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections' approximately 3,700 employees and 305 inmates incarcerated in DCC institutions and Community Service Centers. Approximately 212 additional inmates on controlled intake status could potentially be affected. An unknown number of the approximately 30,400 offenders under the supervision of the Division of Probation and Parole.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The Department of Corrections' institutional and probation and parole staff will be impacted by the changes in the requirements of their jobs. This regulation will require program staff to review inmates for eligibility, administrative staff will enroll eligible offenders in the monitoring service, and P&P staff will see an increase in review of home placements, changes in offenders' schedule, and monitoring.

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

(a) Initially: $511,000, but this amount may be reduced by inmates and offenders who have the ability to pay the monitoring fees

(b) On a continuing basis: The amount will continue to increase by an increase in the net number of inmates and offenders placed on monitoring.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated within the budget.

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

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

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.
VOLUME 32, NUMBER 1 – JULY 1, 2005

STATEMENT OF EMERGENCY
806 KAR 14:007E

On March 18, 2005, Governor Fletcher signed HB 278, 2005 Ky. Acts ch. 144. HB 278, Section 2, carried an emergency clause and became law upon the Governor's signature. HB 278, Section 2 allows health insurers that offer health benefit plans as defined by KRS 304.17A-005 to offer basic health benefit plans. In order to implement the provisions of HB 278, Section 2, it is necessary to promulgate this emergency administrative regulation. 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, 2005.

ERNIE FLETCHER, Governor
LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Emergency Amendment)

806 KAR 14:007E. Rate and form filing for health insurers.

EFFECTIVE: May 13, 2005
NECESSITY, FUNCTION, AND CONFORMITY: 2005 Ky. Acts ch. 123 created the Office of Insurance to be headed by an executive director. KRS 304.2-110 authorizes the Executive Director [Commissioner] of Insurance to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-100 through 304.99-152. Executive Order-064, filed December 23, 2003, created the Environmental and Public Protection Cabinet. This administrative regulation establishes rate and form filing procedures for health insurers.

Section 1. Definitions. (1) "Basic health benefit plan" means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A [Department of Insurance].
(2) "Executive director" means the Executive Director of Insurance.
(3) "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.
(4) "Health benefit plan" is defined in KRS 304.17A-005(18).
(5) "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement.
(6) "Office" means the Office of Insurance.

Section 2. Filing Procedures. (1) Health insurance rate and form filings shall be accompanied by a face sheet and verification form, Form HIPMC-F1, April 2005 [June-2002 edition].
(2) Health policy forms filed under policy form certification shall be accompanied by a certification form, Form HIPMC-F2, September, 2000 edition.
(3) Individual health insurance form filings shall be accompanied by actuarial certification, Form HIPMC-F4, September, 2000 edition.
(4) An insurer issuing, delivering, or renewing a: (a) Health benefit plan shall complete and attach to each plan a health benefit plan summary sheet-form filings, Form HIPMC-F35, July, 2002 edition; and (b) Basic health benefit plan shall complete and attach to each plan a basic health benefit plan summary sheet-form and rate filings, Form HIPMC-F35, April, 2005 edition.
(5) Except for health benefit plan rate filings pursuant to KRS 304.17A-005, a rate filing shall be accompanied by a rate filing information form, Form HIPMC-R6, June, 2002 edition.
(6) The office [department] shall use Form HIPMC-F16, May 2002 edition, to request additional information from a health insurer if a rate or form filing cannot be accepted as submitted.
(7) Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form. Other numbers shall not appear in close proximity to the form number.
(8) Each submission shall be accompanied by a submittal letter on the stationery of the filing entity which intends to use a form, listing by number all forms being submitted together with a brief description of each.
(9) If a form is submitted with alternate pages or alternative [optional] benefits, the submittal letter required by subsection (8) of this section shall state under what conditions each alternate page or alternative [optional] benefit may be used, and each alternate page or alternative [optional] benefit shall be identified by a unique form number.
(10) If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.
(11) Except for insert pages or alternate pages, each form shall contain the corporate name and address of the health insurer.
(12) A form filed for approval shall not contain any advertising or marketing material.
(13) If a new form is submitted, the filing entity shall identify the unique features of the form.
(14) If a filing includes a form which was previously approved, the filing entity shall assign the form a new form number.

Section 3. Filing Entity. A filing entity may include in a filing any number of forms or documents, filed together on a particular date, pertaining to a single line of insurance.

Section 4. Date of Filing. Since KRS 304.4-010(2) requires all fees payable under the insurance code to be collected in advance, the period of time in which the executive director [commissioner] may affirmatively approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the office [department]:
(1) The rate or form filing;
(2) Appropriate fee pursuant to 806 KAR 4.010, Section 1(21); and
(3) Forms required by Sections 2 and 6 of this administrative regulation, as appropriate.

Section 5. Use of Forms and Rates. (1) Except for advertising or marketing material, a form or rate shall not be used in Kentucky until:
(a) The form or rate has been approved or certified by the office [department], which shall occur within the sixty (60) day time frame specified in KRS 304.14-120(2) except as follows:
 1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and
 2. If the executive director [commissioner] grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit corrected forms or rates or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved.
(b) If rates for the form are required by KRS 304.14-120 to be approved, the appropriate rate schedule [therefor] has been approved.
(2) Any document subject to a filed only process, including advertising, marketing material, provider directories, provider agreements, subcontract, provider agreements or risk-sharing arrangements shall be filed with the office [department] and shall be subject to review in accordance with KRS 304.14-120 (14-130).

Section 6. Form Revision. If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filing entity setting forth:
(1) All changes contained in the newly filed form;
(2) The form being replaced and the date the replaced form was approved, withdrawn, or submitted, as the case may be; and
(3) The effect, if any, the changes have upon the policy or the rates applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed:
(a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;
(b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and
(c) Forms required by Section 2 of this administrative regulation.
(2) An appropriate fee pursuant to 806 KAR 4:010, Section 1(22), shall be submitted with each filing.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9 Electronic Filings. (1) Health insurance companies may file their rates and forms in an electronic format established by the National Association of Insurance Commissioners, in the manner prescribed by that format.
(2) Any electronic filing shall be in lieu of a physical filing.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form HIPMC-F1, "Face Sheet and Verification Form" [Department of Insurance], April 2005 [June, 2002] edition;
(b) Form HIPMC-F2, "Health Policy Forms Filing Certification Privilege Program Form" [Department of Insurance], September, 2000 edition;
(c) Form HIPMC-R4, "Individual Health Forms Actuarial Certification Form" [Department of Insurance], September, 2000 edition;
(d) Form HIPMC-F35, "Health Benefit Plan Summary Sheet-Form Filings" [Department of Insurance], July, 2002 edition;
(e) Form HIPMC-R36, "Rate Filing Information Form" [Department of Insurance], June, 2002 edition; and
(f) Form HIPMC-F16, "Additional Health Information Request" [Department of Insurance], May, 2002 edition; and
(g) Form HIPMC-RF-25, "Basic Health Benefit Plan Summary Sheet-Form and Rate Filings", April, 2005 edition.
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office [Department] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office’s [department’s] internet web site at: http://doi.pfr.ky.gov [www.doi.state.ky.us].

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Acting Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: May 5, 2005
FILED WITH LRC: May 13, 2005 at 4 p.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes rate and form filing procedures for health insurers so the executive director will have relevant information to approve or disapprove a filing
(b) The necessity of this administrative regulation: KRS 304.14-120 requires all policy forms to be delivered or issued in Kentucky to be filed with and approved by the executive director before being issued or delivered. KRS 304.14-130 requires the executive director to determine whether the benefits in the policy are reasonably related to the premium charged. This administrative regulation is necessary to establish the procedures for insurers to file forms and rates with the executive director in accordance with the law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes rate and form filing procedures for health insurers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the executive director in the proper review of form and rate filings in accordance with the 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 emergency amendment establishes required rate and form filings for basic health benefit plans.
(b) The necessity of the amendment to this administrative regulation: 2005 RS HB 278, Section 2, enacted by the 2005 GA, includes an "emergency" provision, which allows insurers offering health benefit plans to now offer 1 or more "basic health benefit plans." As with all other insurance rates and forms used by insurers, insurers will be required to submit information relating to the new basic health benefit plan rates and forms. Currently, 806 KAR 14-207, provides instructions and forms for the submission of this required information; therefore, emergency amendments to this existing administrative regulation are required to clarify and communicate new requirements for the submission of information relating to the basic health benefit plan.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes rate and form filing procedures for health insurers.
(d) How the amendment will assist in the effective administration of the statutes: The emergency amendment to this administrative regulation will continue to assist the executive director in the proper review of form and rate filings in accordance with the law by establishing the procedure for form and rate filings of basic health benefit plans.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the 80 licensed insurers writing health insurance in the state of Kentucky.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The changes made by this emergency administrative regulation will not create a significant impact to health insurers. The amended regulation would simply detail the rate and form filing procedures for newly created basic health benefit plans.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file this information, the cost to insurers should not increase significantly, if at all.
(b) On a continuing basis: The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file this information, the cost to insurers should not increase significantly, if at all.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding that would be used for the implementation and enforcement of this administrative regulation would be the budget of the Office of Insurance
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The office does not anticipate that any increase in fees or funding will be necessary.
to implement this regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers that issue, deliver, or renew health benefit plans in the state of Kentucky.

STATEMENT OF EMERGENCY
806 KAR 17:500E

On March 18, 2005, Governor Fletcher signed HB 278, 2005 Ky. Acts ch. 144. HB 278, Section 2, carried an emergency clause and became law upon the Governor’s signature. HB 278, Section 2 allows health insurers that offer health benefit plans as defined by KRS 304.17A-005 to offer basic health benefit plans. In order to implement the provisions of HB 278, Section 2, it is necessary to promulgate this emergency administrative regulation. 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, 2005.

ERNIE FLETCHER, Governor
LAJJANAL S. WILCHEK, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(New Emergency Administrative Regulation)

806 KAR 17:500E. Basic Health Benefit Plan Requirements.


STATUTORY AUTHORITY: KRS 304.2-110(1).

EFFECTIVE: May 13, 2005

NECESSITY, FUNCTION, AND CONFORMITY: 2005 Ky. Acts ch. 123 created the Office of Insurance and Conformity by an executive director. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2005 Ky. Acts ch. 144, sec. 2, authorizes insurers to offer one (1) or more basic health benefits plans in Kentucky. This administrative regulation establishes the requirements of a basic health benefit plan.

Section 1. Definitions. (1) "Basic health benefit plan" means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A.

(2) "Executive director" means the executive director of insurance.

(3) "Health benefit plan" is defined in KRS 304.17A-005(18).

(4) "Office" means the Office of Insurance.

(5) "State mandated health benefit" means:
(a) Coverage required under the Kentucky Insurance Code, as defined in KRS 304.1-010, to be included under an individual, small group or employer association health benefit plan that includes:
1. Coverage of certain persons;
2. Coverage for specific illnesses, procedures, or types of treatment;
3. Coverage of care by certain health providers for a covered expense; and
(b) Coverage which does not include benefits or coverage required by federal law or standard provisions or rights required under the Kentucky Insurance Code, as defined in KRS 304.1-010, or other laws of this state to be provided in an individual, small group, or employer-organized association health benefit plan.

Section 2. Disclosure Statement. (1) An insurer that offers a basic health benefit plan shall disclose to all individuals, small employer groups and employer-organized associations prior to the issuance of a policy or certificate of coverage that the basic health benefit plan:
(a) Provides limited coverage;
(b) Includes federally mandated benefits; and
(c) Excludes state-mandated benefits, except for diabetes as provided in KRS 304.17A-148, hospice as provided in KRS 304.17A-250(6) and chiropractic benefits as provided in KRS 304.17A-171.

(2) A statement disclosing the required information as established in subsection (1) of this section shall:
(a) Accompany or be a part of the application for coverage under a basic health benefit plan; and
(b) Be included in a basic health benefit plan policy and certificate of coverage.

(3) A statement of disclosure as established in subsection (2) of this section shall:
(a) Meet the requirements of 806 KAR 14:121; and
(b) List the state-mandated benefits excluded in whole or in part from coverage under the basic health benefit plan.

Section 3. Benefits mandated to be included in a health benefit plan that may be included in whole or in part in a basic health benefit plan include:
(1) Coverage of amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases as provided for in KRS 304.17A-139(4);
(2) Coverage of health care treatment or services rendered by an ambulatory surgical center as provided for in KRS 304.17-317, 304.18-035, and 304.32-156;
(3) Coverage of the services rendered by a podiatrist as provided for in KRS 304.17-133(3) and 304.18-033;
(4) Coverage of dental services provided by a physician as provided for in KRS 304.17-315 and 304.18-097;
(5) Coverage of the treatment of temporomandibular joint disorders, craniomandibular joint disorders, and craniomandibular jaw disorders as provided for in KRS 304.17-319, 304.18-035, and 304.32-156;
(6) Coverage of mammography screening as provided for in KRS 304.17-316, 304.18-098, 304.32-1591, and 304.38-1935;
(7) Coverage of the treatment of breast cancer by high-dose chemotherapy with autologous bone marrow transplantation or stem cell transplantation as provided for in KRS 304.17-315, 304.17A-135, 304.18-0985, and 304.38-1936;
(8) Coverage of services provided by licensed psychologists and licensed clinical social workers as provided for in KRS 304.17-3185, 304.18-0363, 304.32-165, and 304.38-1933;
(9) Coverage of surgical first assisting services of a:
(a) Registered nurse first assistant as provided for in KRS 304.17A-148;
(b) Certified surgical assistant as provided for in KRS 304.17A-147;
(c) Physician assistant as provided for in KRS 304.17A-147;
(d) Coverage of the treatment of human immunodeficiency virus infections as provided for in KRS 304.12-013(5);
(e) Coverage of cochlear implants as provided for in KRS 304.17A-131;
(f) Coverage of the treatment of autism in children as provided for in KRS 304.17A-143;
(10) Coverage of telehealth services as provided in KRS 304.17A-138.
(14) Coverage of anesthesia and services in connection with dental procedures as provided for in KRS 304.17A-149;
(15) Coverage of hearing aids and related services as provided for in KRS 304.17A-123;
(16) Coverage of nursery care for newborn children as provided for in KRS 304.17-185, 304.18-033, 304.32-154, and 304.38-198;
(17) Coverage of the diagnosis and treatment of endometriosis and endometritis as provided for in KRS 304.17-3163(1)(b), 304.18-0983(1)(b), 304.32-1593(1)(b), and 304.38-1934(1)(b); and
(18) Coverage of bone density screening as provided for in KRS 304.17-3163(1)(c), 304.18-0983(1)(c), and 304.38-1934(1)(c).

Section 4. Basic Health Benefit Plan Requirements. (1) Except for the provisions relating to state mandated health benefits established under 2005 Ky. Acts ch. 144, sec. 2, a basic health benefit plan:
(a) Shall comply with the applicable requirements of a health benefit plan as established under Subrules 12, 14, 17, 17A, 18, 32, and 38 of KRS Chapter 304 and 805 KAR Chapters 12, 14, 17, 18, 32, and 38; and
(b) May include one (1) or more of the benefits listed in Section 3 of this administrative regulation.
(2) A basic health benefit plan shall include benefits mandated under federal law as required under 2005 Ky. Acts ch. 144, sec. 2(3), including benefits for the following:
(a) Women's health and cancer pursuant to:
   1. 42 U.S.C. 300gg-6, for a group basic health benefit plan; and
   2. 42 U.S.C. 300gg-52, for an individual basic health benefit plan;
(b) Party in the application of limits to mental health benefits pursuant to 42 U.S.C. 300gg-5 for a group basic health benefit plan; and
(c) Newborns' and mothers' health pursuant to:
   1. 42 U.S.C. 300gg-4, for a basic health benefit plan issued to a group and association; and
   2. 42 U.S.C. 300gg-51, for a basic health benefit plan issued to an individual.
(3) A basic health benefit plan shall be marketed, distributed, and issued by an insurer in the same manner as a health benefit plan.

Section 5. Annual Reporting Requirements. In addition to the reporting requirements established under KRS 304.17A-330, an insurer offering a basic health benefit plan shall report to the Office of Insurance annually by April 1, on the form HIPMC-BHP-1, the following information specific to a basic health benefit plan:
(1) Total premium by product type and market segment;
(2) Total enrollment by product type, market segment, and county; and
(3) Total number of individuals not covered under health insurance for a period of at least one (1) year prior to coverage under a basic health benefit plan.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office's internet web site at: http://tdol.prky.gov.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, ACTING Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: May 5, 2005
FILED WITH LRC: May 13, 2005 at 4 p.m.
CONTACT PERSON. DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: DJ Wasson
(1) Provide a brief summary of.
(a) What this administrative regulation does: This administrative regulation details requirements established for basic health benefit plans.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the requirements of 2005 RS HB 278, Section 2, and provide clear direction to insurers filling forms and rates for basic health benefit plans.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) provides that the executive director may promulgate administrative regulations necessary for or as an aid to the execution of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2005 RS HB 278, Section 2 authorizes insurers to offer 1 or more basic health benefit plans in Kentucky. This administrative regulation details the requirements of a basic health benefit plan.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: As this emergency administrative regulation will clarify in detail the statutory requirements relating to basic health plans, it will provide clear direction to insurers filling forms and rates for basic health benefit plans.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation.
(a) How the amendment will change this existing administrative regulation: This is a new regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation details statutory requirements for basic health benefit plans. By law, a basic health benefit plan may be issued in the individual, small group, and employer organized association markets; thus, individuals, health insurance consumers, small group health insurance consumers, and employer-organized association health insurance consumers, as well as health insurers that decide to offer basic health benefit plans, will be affected by this regulation. As basic health benefit plans were authorized with the passage of 2005 RS HB 278, and there is no data available at this time, the Office of Insurance is unable to determine the number of insurers who will decide to offer a basic health benefit plan or the number of individuals, small groups, or employer organized associations that will decide to enroll in basic health benefit plans.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Basic health benefit plans are a type of health benefit plan. The plans may exclude any or all state-mandated benefits, excluding a designated few. It is believed basic health benefit plans will offer individuals, small group employers (i.e., employers with less than 50 employees), and employer organized associations that are currently uninsured or having difficulty maintaining current health insurance coverage with more "affordable" coverage.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: The Office of Insurance will be able to implement this emergency administrative regulation utilizing existing resources and staffing levels, and we do not believe that we will experience significant increased costs to relating to implementation.
(b) On a continuing basis: The Office of Insurance will be able to implement this emergency administrative regulation utilizing existing resources and staffing levels, and we do not believe that we will experience significant increased costs to relating to implementation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The
source of funding that would be used for the implementation and enforcement of this administrative regulation would be the budget of the Office of Insurance.

(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 emergency administrative regulation will not result in an increase to any fees or require an increase in funding.

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

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all insurers that issue, deliver, or renew health benefit plans in the state of Kentucky.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, June 14, 2005)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (20) [199]
164.752(2), 34 C.F.R. 662.410(a)(10), 20 U.S.C. 1071-1077-2,
1095a

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(2), 20
U.S.C. 1095(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to
KRS 164.744(1) and 164.748(2), the Kentucky Higher Education
Assistance Authority has entered into agreements with the secret-
ary to provide loan guarantees in accordance with 20 U.S.C. 1071
through 1087-2. 20 U.S.C. 1095a permits a student loan guaran-
tee agency to garnish the disposable pay of a borrower to recover a
loan guaranteed pursuant to 20 U.S.C. 1071 through 1087-2, not-
withstanding a provision of state law. That section also permits the
student loan guarantee agency to establish procedures for re-
questing and conducting a hearing related to the wage garnish-
ment. KRS 164.748(10) authorizes the authority to collect from
borrowers loans on which the authority has met its guarantee obli-
gation, and KRS 164.748(20) [199] authorizes the authority to
conduct administrative hearings, exempt from KRS Chapter 13B,
pertaining to wage garnishment. This administrative regulation
establishes the procedures for implementing wage garnishment in
accordance with requirements of the federal act.

Section 1. (1) Following payment of a claim by the authority to
a participating lender by reason of the borrower's default in repay-
ment of an insured student loan, the authority, acting through its
executive director or other designee, may issue an administrative
order for the withholding of the debtor's disposable pay, which
order shall conform to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is
either a borrower or an endorser of an insured student loan.

(3) An order for withholding of disposable pay shall not be
issued under this section nor become effective less than thirty (30)
days after the authority provides a written notice to the debtor by
personal service or mail, addressed to the debtor at the residence
or employment last known to the authority. The notice shall include
at least the following information:

(a) The name and address of the debtor;

(b) The amount of the debt determined by the authority to be
due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue an
order for withholding of disposable pay;

(e) A statement of the right to dispute the existence or amount
of the debt or the terms of a proposed repayment schedule under
the garnishment order (other than a repayment schedule agreed to
in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records
relating to the debt open to inspection in accordance with KRS
61.870 through 61.884;

(g) A statement of the opportunity to enter into a written
agreement with the authority, on terms satisfactory to the authority,
establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by
the authority for the debtor's failure to timely request a hearing, the
debtor's acquiescence to the withholding of disposable pay shall be
presumed; and

(i) A statement that if the debtor requests a hearing, but fails to
appear without good cause determined by the hearing officer, the
hearing officer shall affirm the issuance of an order for withholding
of disposable pay.

(4) An amount shall not be withheld from the disposable pay of
an individual during the first twelve (12) consecutive months of
reemployment commenced within twelve (12) months following an
involuntary separation from employment.

(5) Establishment of a written repayment schedule in accord-
ance with subsection (3)(g) of this section shall be deemed, for
purposes of subsection (3)(e) of this section, conclusive acknow-
ledgement by the debtor of the existence and amount of debt
agreed to be paid.

(6) Service of the notice required by subsection (3) of this sec-
ction shall be conclusively presumed to be effected five (5) days
after mailing of the notice by the authority, unless the notice is
returned to the authority undelivered by the postal service. The
date of service of the notice shall otherwise be evidenced by affi-
davit of a person executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or
before the 15th day following the date of service of the notice re-
quired by Section 1(3) of this administrative regulation, files with
the authority a written request for a hearing in accordance with
procedures prescribed by this administrative regulation. The timely
filing of a request for a hearing (evidenced by a legibly dated U.S.
Postal Service postmark or mail receipt) shall automatically stay
further collection activity under this administrative regulation pend-
ing the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely
filed, a hearing shall be provided, but the request shall not
stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not
be an individual under the supervision or control of the board other
than an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and
withdraw from a case in which he cannot afford a fair and impartial
hearing.

1. A party shall request the disqualification of a hearing officer
by filing an affidavit, upon discovery of facts establishing grounds
for a disqualification, stating the particular grounds upon which he
claims that a fair and impartial hearing cannot be accorded.

2. The request for disqualification and the disposition of the
request shall be a part of the official record of the proceeding.

3. Grounds for disqualification of a hearing officer shall include
the following:

a. Participating in an ex parte communication which would
prejudice the proceedings;

b. Having a pecuniary interest in the outcome of the proceed-
ing;

c. Having a personal bias toward a party to a proceeding which
would cause a prejudgment on the outcome of the proceeding;

d. A dispute hearing shall be conducted in Franklin County or
another location agreed to by the parties.

(e) In lieu of an in-person hearing, upon request of the debtor, a
hearing may be conducted by telephone or the hearing officer may
conduct a review based solely upon submission of written material
by both the debtor and the authority. An in-person or telephonic
hearing shall be mechanically, electronically or stenographically
recorded.

(f) Unless required for the disposition of an ex parte matter
specifically authorized by this administrative regulation, a hearing
officer shall not communicate off the record with a party to the
hearing concerning a substantive issue, while the proceeding is
pending.

(g) The hearing officer's decision, reason therefor and an
explanation of the appeal process shall be rendered in writing no
more than sixty (60) days after receipt by the authority of the re-
quest for the hearing. The decision shall establish the debtor's
liability, if any, for repayment of the debt and the amount to be withheld from the debtor’s disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer’s decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor’s disposable pay.

(c) A person, upon request, shall receive a copy of the official record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:
1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Protests of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer’s decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer’s decision, the debtor or the authority may petition the board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer’s decision. A petition for review of the hearing officer’s decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer’s decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer’s decision shall not stay a final order pending the outcome of the review. If the debtor’s liability is established by the hearing officer’s decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer’s decision if the debtor petitions the board to reverse the hearing officer’s decision and obtains reversal, modification or remand of the hearing officer’s decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition of review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer’s decision shall contain the following information:
1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer’s decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;
2. A statement specifying the part of the official record that the petitioner believes is relevant to the hearing officer’s decision;
3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer’s decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer’s decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer’s decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall:
1. Not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact; and
2. At any time before the conclusion of the hearing, determine the applicability of the hearing officer’s decision and order to the hearing officer’s decision; and
3. Uphold the hearing officer’s decision unless it is clearly unsupported by the evidence and the applicable law;
4. Reject or modify, in whole or in part, the hearing officer’s decision; or
5. Remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer’s final order is:
(i) In violation of constitutional or statutory provisions;
(ii) In excess of the statutory authority of the agency;
(iii) Without support of substantial evidence on the whole record;
(iv) Arbitrary, capricious, or characterized by abuse of discretion; or
(v) Based on an ex parte communication which substantially prejudiced the rights of a party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer’s decision, it shall include separate statements of findings of fact and conclusions of law.

(i) The remedies provided in this section shall not:
(a) Preclude the use of any other judicial or administrative remedies available to the authority under state or federal law; and
(b) Be construed to stay the use of another remedy.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) Upon request of a party, the hearing officer may issue a subpoena for the production of a document or attendance of a witness.

(b) Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority a written statement specifically stating the basis of dispute.

(2)(c) Not less than fifteen (15) business days prior to the hearing, the parties shall:
1. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;
2. Discuss the possibility of informal resolution of the dispute;
3. Exchange a witness list of the names, addresses, and phone numbers of each witness expected to testify at the hearing.
4. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority shall serve upon the debtor proposed stipulation of issues. If within five (5) calendar days, the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising an additional issue not identified in the proposed stipulation of issues.

4. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with paragraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed by Section 2(2) of this administrative regulation.

6. If the debtor requests a hearing, but the debtor’s written statement and supporting documentation, considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority’s claim, the hearing officer, on the authority and notice to the debtor, may enter an order dismissing the request for
VOLUME 32, NUMBER 1 – JULY 1, 2005

a hearing and authorizing issuance of the order described in Section 5 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 1(3) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

d) Either party, without leave of the hearing officer, may depose a witness, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories or request for admissions.

2. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days.

3. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Sufficient grounds for entry of an appropriate order by the hearing officer, including postponement, exclusion of evidence, dismissal of the proceeding, quashing the withholding order, or vacating the stay, shall exist if there is:

1. Noncompliance with this subsection;
2. Failure of the authority to:
   a. Timely appoint a hearing officer; or
   b. Respond to a request for inspection of records; or
3. Failure of the debtor to submit in accordance with paragraph (b) of this subsection.

(3) Order of proceeding

(a) The hearing officer shall:
   1. Convene an in-person or telephonic hearing;
   2. Identify the parties to the action and the persons participating;
   3. Admit into evidence the notice required by Section 1(3) of this administrative regulation and the debtor's statement and the stipulations required by subsection (2)(b)1 and 2 of this section;
   4. Solicit from the parties and dispose of any objections or motions;
   5. Accept into evidence any documentary evidence not objected to;
   6. Solicit opening statements; and
   7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation.

(b) The hearing officer shall not admit evidence that is inadmissible as a violation of an individual's constitutional or statutory rights or is privileged by the courts of the commonwealth.

2. Statutes or judicial rules pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section.

3. The hearing officer may receive evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision.

4. A copy of a document shall be admissible if:
   a. There is minimal authentication to establish a reasonable presumption of its genuineness and accuracy; or
   b. It is admitted without objection.

5. The hearing officer may exclude evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) An objection to an evidentiary offer may be made by any party and shall be noted in the record.

(c) The hearing officer:

1. May take official notice of:
   a. Statutes and administrative regulations;
   b. Facts which are not in dispute; and
   c. Generally-recognized technical or scientific facts;
   2. Shall notify all parties, either before or during the hearing of a fact so noticed and its source; and
   3. Shall give each party an opportunity to contest facts officially

noticed.

(d) At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(e) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(f) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on an issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontested facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert a defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of a proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense a question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party tiner of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer:

(a) Shall
   1. Consider the matter; and
   2. Give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency; and

(b) May reverse the prior decision if the debtor presents evidence that:
   1. Circumstances have changed or new information is available; or
   2. There is a prior decision:
      a. Substantially disregarded or ignored the defense; or
      b. Was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 C.F.R. 682.402, except for reasons of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 11 U.S.C. 523(a)(8), but the debtor did not previously seek discharge by the
bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt, or

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of any disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall review the debtor's available resources and the necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of the debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of any disposable pay shall constitute an extreme financial hardship if:
   a. The debtor resides in the District of Columbia or a state other than Alaska or Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$9,570 [9,340]</td>
</tr>
<tr>
<td>2</td>
<td>$12,830 [12,460]</td>
</tr>
<tr>
<td>3</td>
<td>$16,090 [15,670]</td>
</tr>
<tr>
<td>4</td>
<td>$19,350 [18,860]</td>
</tr>
<tr>
<td>5</td>
<td>$22,610 [22,030]</td>
</tr>
<tr>
<td>6</td>
<td>$25,870 [25,310]</td>
</tr>
</tbody>
</table>

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,950 [11,630]</td>
</tr>
<tr>
<td>2</td>
<td>$16,030 [15,640]</td>
</tr>
<tr>
<td>3</td>
<td>$20,110 [19,690]</td>
</tr>
<tr>
<td>4</td>
<td>$24,190 [23,760]</td>
</tr>
<tr>
<td>5</td>
<td>$28,270 [27,860]</td>
</tr>
<tr>
<td>6</td>
<td>$32,350 [31,930]</td>
</tr>
<tr>
<td>7</td>
<td>$36,430 [35,640]</td>
</tr>
<tr>
<td>8</td>
<td>$40,510 [39,900]</td>
</tr>
</tbody>
</table>

Each additional person Add $4,080 [3,660]

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>Poverty guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,010 [10,790]</td>
</tr>
<tr>
<td>2</td>
<td>$14,760 [14,360]</td>
</tr>
<tr>
<td>3</td>
<td>$18,510 [18,020]</td>
</tr>
<tr>
<td>4</td>
<td>$22,260 [21,860]</td>
</tr>
<tr>
<td>5</td>
<td>$26,010 [25,740]</td>
</tr>
<tr>
<td>6</td>
<td>$29,760 [29,000]</td>
</tr>
<tr>
<td>7</td>
<td>$33,510 [32,760]</td>
</tr>
<tr>
<td>8</td>
<td>$37,260 [36,320]</td>
</tr>
</tbody>
</table>

Each additional person Add $3,750 [3,660]

2. a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary.

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2.596</td>
<td>2.675</td>
<td>3.101</td>
<td>2.562</td>
<td>3.466</td>
<td>3.478</td>
<td>2.837</td>
<td>2.527</td>
<td>1.809</td>
</tr>
<tr>
<td>Other lodging</td>
<td>3.55</td>
<td>1.53</td>
<td>1.59</td>
<td>1.38</td>
<td>1.50</td>
<td>2.58</td>
<td>4.08</td>
<td>6.05</td>
<td>1.360</td>
</tr>
<tr>
<td>Utilities, fuels, and public</td>
<td>1.611</td>
<td>1.412</td>
<td>1.855</td>
<td>2.194</td>
<td>2.363</td>
<td>2.720</td>
<td>2.864</td>
<td>3.201</td>
<td>3.979</td>
</tr>
<tr>
<td>Household services</td>
<td>0.99</td>
<td>1.98</td>
<td>5.38</td>
<td>3.27</td>
<td>4.64</td>
<td>4.18</td>
<td>5.75</td>
<td>6.60</td>
<td>1.875</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>3.85</td>
<td>2.93</td>
<td>3.46</td>
<td>4.56</td>
<td>4.66</td>
<td>4.80</td>
<td>5.42</td>
<td>6.58</td>
<td>8.71</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>6.56</td>
<td>5.04</td>
<td>5.77</td>
<td>6.60</td>
<td>8.71</td>
<td>1.290</td>
<td>1.424</td>
<td>1.696</td>
<td>3.058</td>
</tr>
<tr>
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<td>1.89</td>
<td>1.322</td>
<td>0.88</td>
<td>1.610</td>
<td>2.398</td>
<td>3.737</td>
<td>4.382</td>
<td>5.337</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>3.71</td>
<td>3.20</td>
<td>4.63</td>
<td>0.91</td>
<td>7.71</td>
<td>1.042</td>
<td>1.470</td>
<td>1.472</td>
<td>1.838</td>
</tr>
<tr>
<td>Vehicle maintenance and</td>
<td>170</td>
<td>231</td>
<td>262</td>
<td>386</td>
<td>449</td>
<td>546</td>
<td>611</td>
<td>752</td>
<td>1,008</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>296</td>
<td>270</td>
<td>425</td>
<td>526</td>
<td>647</td>
<td>756</td>
<td>1,005</td>
<td>1,181</td>
<td>1,528</td>
</tr>
<tr>
<td>Vehicle lease, license and other charges</td>
<td>159</td>
<td>104</td>
<td>192</td>
<td>238</td>
<td>249</td>
<td>372</td>
<td>587</td>
<td>675</td>
<td>1,198</td>
</tr>
</tbody>
</table>

-17-
### VOLUME 32, NUMBER 1 – JULY 1, 2005

<table>
<thead>
<tr>
<th>Public transportation</th>
<th>284</th>
<th>204</th>
<th>285</th>
<th>301</th>
<th>463</th>
<th>432</th>
<th>533</th>
<th>663</th>
<th>1,054</th>
</tr>
</thead>
</table>

#### [Debtor’s Available Resources]

<table>
<thead>
<tr>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
</table>

---

#### Annual Expenditures

| Owned-dwelling | 2,118 | 4,147 | 4,778 | 8,051 | 12,274 | 16,643 | 20,874 | 24,786 | 28,028 |
| Rented-dwelling | 2,166 | 4,227 | 4,830 | 8,129 | 12,278 | 16,673 | 20,902 | 24,813 | 28,055 |
| Other-lodging | 441 | 474 | 497 | 858 | 1,123 | 1,495 | 1,882 | 2,288 | 2,723 |
| Utilities, fuels, and public services | 3,117 | 4,335 | 6,069 | 10,153 | 14,309 | 18,628 | 22,947 | 27,271 | 31,595 |
| Household services | 406 | 483 | 699 | 1,224 | 1,767 | 2,310 | 2,853 | 3,406 | 3,965 |
| Housekeeping and miscellaneous supplies | 351 | 420 | 637 | 1,074 | 1,611 | 2,148 | 2,685 | 3,222 | 3,758 |
| House furnishings and equipment | 886 | 933 | 1,036 | 1,724 | 2,416 | 3,108 | 3,799 | 4,491 | 5,183 |
| Vehicle purchases (net outlay) | 1,188 | 1,231 | 1,517 | 2,443 | 3,369 | 4,295 | 5,221 | 6,147 | 7,073 |
| Gasoline and motor oil | 174 | 186 | 231 | 383 | 535 | 717 | 899 | 1,081 | 1,263 |
| Vehicle maintenance and repairs | 403 | 486 | 719 | 1,162 | 1,605 | 2,048 | 2,491 | 2,934 | 3,377 |
| Vehicle insurance | 370 | 413 | 594 | 941 | 1,388 | 1,835 | 2,282 | 2,729 | 3,176 |
| Vehicle leasing, license, and other charges | 365 | 398 | 562 | 858 | 1,253 | 1,650 | 2,047 | 2,444 | 2,841 |

#### Public transportation

| 300 | 227 | 209 | 343 | 383 | 478 | 649 | 627 | 1,571 |

---

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
<th>Pittsburgh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwellings</td>
<td>7,640</td>
<td>6,522</td>
<td>6,318</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>4,068</td>
<td>3,167</td>
<td>3,203</td>
</tr>
<tr>
<td>Other lodging</td>
<td>666</td>
<td>454</td>
<td>603</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,055</td>
<td>3,105</td>
<td>2,678</td>
</tr>
<tr>
<td>Household services</td>
<td>1,113</td>
<td>789</td>
<td>772</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>553</td>
<td>517</td>
<td>407</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,795</td>
<td>1,527</td>
<td>1,212</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,928</td>
<td>2,399</td>
<td>3,518</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,101</td>
<td>1,142</td>
<td>1,159</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, leasing, license, and other charges)</td>
<td>2,658</td>
<td>2,596</td>
<td>2,074</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>New York</th>
<th>Philadelphia</th>
<th>Boston</th>
<th>Pittsburgh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwellings</td>
<td>7,627</td>
<td>6,567</td>
<td>6,924</td>
</tr>
<tr>
<td>Rented dwellings</td>
<td>3,864</td>
<td>4,610</td>
<td>3,082</td>
</tr>
<tr>
<td>Other lodging</td>
<td>712</td>
<td>516</td>
<td>670</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,004</td>
<td>3,114</td>
<td>2,668</td>
</tr>
<tr>
<td>Household services</td>
<td>1,168</td>
<td>766</td>
<td>676</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>648</td>
<td>493</td>
<td>416</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,746</td>
<td>1,487</td>
<td>1,249</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,617</td>
<td>2,347</td>
<td>3,021</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>4,664</td>
<td>3,146</td>
<td>4,146</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, leasing, license, and other charges)</td>
<td>2,618</td>
<td>2,672</td>
<td>2,363</td>
</tr>
</tbody>
</table>

---

3a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor’s Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
</table>

---

| Owned dwelling | 1,591 | 923 | 1,726 | 2,541 | 2,406 | 3,481 | 4,645 | 6,051 | 10,228 |
| Rented dwelling | 2,109 | 2,254 | 2,215 | 2,220 | 2,402 | 1,941 | 1,974 | 1,557 | 666 |
| Other lodging | 402 | 182 | 174 | 189 | 219 | 225 | 231 | 416 | 1,276 |
| Utilities, fuels, and public services | 1,444 | 1,496 | 1,986 | 2,257 | 2,369 | 2,643 | 2,777 | 3,140 | 3,803 |
| Household operations services | 377 | 115 | 258 | 262 | 334 | 381 | 464 | 690 | 1,347 |
| Housekeeping and miscellaneous supplies | 240 | 253 | 340 | 446 | 540 | 626 | 740 | 973 |
| Household furnishings and equipment | 619 | 388 | 533 | 807 | 1,121 | 1,149 | 1,390 | 1,865 | 3,543 |
| Vehicle purchases (net outlay) | 1,699 | 1,352 | 2,086 | 1,848 | 2,664 | 3,436 | 4,024 | 5,066 | 7,362 |
### VOLUME 32, NUMBER 1 – JULY 1, 2005

<table>
<thead>
<tr>
<th>Gasoline and motor oil</th>
<th>852</th>
<th>510</th>
<th>630</th>
<th>857</th>
<th>1,010</th>
<th>1,312</th>
<th>1,400</th>
<th>1,653</th>
<th>2,032</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>282</td>
<td>231</td>
<td>320</td>
<td>441</td>
<td>449</td>
<td>559</td>
<td>669</td>
<td>873</td>
<td>1,091</td>
</tr>
<tr>
<td>270</td>
<td>278</td>
<td>232</td>
<td>456</td>
<td>601</td>
<td>696</td>
<td>903</td>
<td>942</td>
<td>1,103</td>
<td>1,421</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>213</td>
<td>138</td>
<td>132</td>
<td>225</td>
<td>285</td>
<td>400</td>
<td>428</td>
<td>565</td>
<td>1,077</td>
</tr>
<tr>
<td>Public transportation</td>
<td>173</td>
<td>141</td>
<td>96</td>
<td>140</td>
<td>271</td>
<td>180</td>
<td>322</td>
<td>394</td>
<td>848</td>
</tr>
</tbody>
</table>

#### Debtor's Available Resources

<table>
<thead>
<tr>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned-dwelling</td>
<td>2,065</td>
<td>009</td>
<td>4,226</td>
<td>4,067</td>
<td>2,502</td>
<td>3,456</td>
<td>4,178</td>
<td>6,269</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>1,590</td>
<td>1,651</td>
<td>2,104</td>
<td>2,253</td>
<td>2,052</td>
<td>2,650</td>
<td>4,931</td>
<td>4,293</td>
</tr>
<tr>
<td>Other lodging</td>
<td>856</td>
<td>422</td>
<td>436</td>
<td>169</td>
<td>214</td>
<td>268</td>
<td>308</td>
<td>808</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,499</td>
<td>1,440</td>
<td>1,860</td>
<td>2,098</td>
<td>2,435</td>
<td>2,654</td>
<td>2,821</td>
<td>3,052</td>
</tr>
<tr>
<td>Household operations</td>
<td>442</td>
<td>422</td>
<td>244</td>
<td>285</td>
<td>444</td>
<td>430</td>
<td>612</td>
<td>721</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>301</td>
<td>247</td>
<td>276</td>
<td>377</td>
<td>421</td>
<td>466</td>
<td>567</td>
<td>4,374</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>764</td>
<td>426</td>
<td>668</td>
<td>818</td>
<td>908</td>
<td>981</td>
<td>1,063</td>
<td>1,063</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>4,306</td>
<td>1,506</td>
<td>2,460</td>
<td>4,842</td>
<td>2,790</td>
<td>3,886</td>
<td>4,263</td>
<td>4,622</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>730</td>
<td>470</td>
<td>684</td>
<td>812</td>
<td>1,044</td>
<td>1,271</td>
<td>1,419</td>
<td>1,650</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>348</td>
<td>288</td>
<td>320</td>
<td>630</td>
<td>404</td>
<td>588</td>
<td>372</td>
<td>636</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>270</td>
<td>242</td>
<td>377</td>
<td>622</td>
<td>686</td>
<td>860</td>
<td>4,006</td>
<td>1,164</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>316</td>
<td>414</td>
<td>468</td>
<td>210</td>
<td>301</td>
<td>268</td>
<td>628</td>
<td>223</td>
</tr>
<tr>
<td>Public transportation</td>
<td>495</td>
<td>98</td>
<td>450</td>
<td>439</td>
<td>217</td>
<td>488</td>
<td>296</td>
<td>404</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Chicago</th>
<th>Detroit</th>
<th>Milwaukee</th>
<th>Minneapolis St Paul</th>
<th>Cleveland</th>
<th>Cincinnati</th>
<th>St Louis</th>
<th>Kansas City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
<td>7,333</td>
<td>8,504</td>
<td>6,584</td>
<td>2,465</td>
<td>5,349</td>
<td>4,704</td>
<td>5,303</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>3,144</td>
<td>1,717</td>
<td>2,586</td>
<td>2,377</td>
<td>1,565</td>
<td>2,084</td>
<td>1,977</td>
</tr>
<tr>
<td>Other lodging</td>
<td>612</td>
<td>595</td>
<td>598</td>
<td>833</td>
<td>349</td>
<td>385</td>
<td>699</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,190</td>
<td>2,911</td>
<td>2,558</td>
<td>2,766</td>
<td>3,079</td>
<td>2,520</td>
<td>3,083</td>
</tr>
<tr>
<td>Household services</td>
<td>876</td>
<td>732</td>
<td>622</td>
<td>849</td>
<td>472</td>
<td>586</td>
<td>477</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>624</td>
<td>530</td>
<td>601</td>
<td>730</td>
<td>432</td>
<td>510</td>
<td>434</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,089</td>
<td>1,442</td>
<td>1,796</td>
<td>2,531</td>
<td>1,089</td>
<td>1,741</td>
<td>1,587</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>3,570</td>
<td>3,955</td>
<td>3,002</td>
<td>4,209</td>
<td>3,716</td>
<td>3,817</td>
<td>4,231</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,325</td>
<td>1,354</td>
<td>1,284</td>
<td>1,400</td>
<td>1,107</td>
<td>1,152</td>
<td>1,261</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,410</td>
<td>3,228</td>
<td>2,142</td>
<td>3,007</td>
<td>2,531</td>
<td>2,466</td>
<td>2,545</td>
</tr>
<tr>
<td>Public transportation</td>
<td>657</td>
<td>486</td>
<td>368</td>
<td>654</td>
<td>349</td>
<td>269</td>
<td>322</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chicago</th>
<th>Detroit</th>
<th>Milwaukee</th>
<th>Minneapolis St Paul</th>
<th>Cleveland</th>
<th>Cincinnati</th>
<th>St Louis</th>
<th>Kansas City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned-dwelling</td>
<td>7,676</td>
<td>6,520</td>
<td>5,160</td>
<td>7,070</td>
<td>5,453</td>
<td>4,768</td>
<td>4,912</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,152</td>
<td>1,574</td>
<td>2,806</td>
<td>2,372</td>
<td>1,488</td>
<td>2,595</td>
<td>4,962</td>
</tr>
<tr>
<td>Other lodging</td>
<td>840</td>
<td>654</td>
<td>474</td>
<td>700</td>
<td>480</td>
<td>302</td>
<td>604</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,206</td>
<td>2,904</td>
<td>2,462</td>
<td>2,648</td>
<td>3,024</td>
<td>2,609</td>
<td>2,948</td>
</tr>
<tr>
<td>Household services</td>
<td>820</td>
<td>726</td>
<td>660</td>
<td>827</td>
<td>585</td>
<td>644</td>
<td>644</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>622</td>
<td>606</td>
<td>646</td>
<td>876</td>
<td>439</td>
<td>628</td>
<td>462</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>1,622</td>
<td>3,779</td>
<td>4,732</td>
<td>2,377</td>
<td>1,219</td>
<td>1,469</td>
<td>1,417</td>
</tr>
<tr>
<td>Vehicle purchases (net-outlay)</td>
<td>4,064</td>
<td>3,376</td>
<td>3,007</td>
<td>4,104</td>
<td>3,470</td>
<td>3,932</td>
<td>4,023</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,327</td>
<td>1,380</td>
<td>1,407</td>
<td>4,425</td>
<td>1,477</td>
<td>4,183</td>
<td>4,241</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,476</td>
<td>3,449</td>
<td>2,674</td>
<td>5,062</td>
<td>2,604</td>
<td>2,636</td>
<td>2,636</td>
</tr>
<tr>
<td>Public transportation</td>
<td>270</td>
<td>465</td>
<td>308</td>
<td>664</td>
<td>407</td>
<td>265</td>
<td>431</td>
</tr>
</tbody>
</table>

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Misis-
### VOLUME 32, NUMBER 1 – JULY 1, 2005

sippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for a metropolitan area listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>3,155</td>
<td>1,344</td>
<td>1,342</td>
<td>1,831</td>
<td>2,423</td>
<td>3,023</td>
<td>4,185</td>
<td>5,423</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,008</td>
<td>1,783</td>
<td>1,846</td>
<td>2,079</td>
<td>2,209</td>
<td>2,367</td>
<td>1,950</td>
<td>1,546</td>
</tr>
<tr>
<td>Other lodging</td>
<td>166</td>
<td>86</td>
<td>94</td>
<td>100</td>
<td>119</td>
<td>281</td>
<td>288</td>
<td>371</td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,619</td>
<td>1,850</td>
<td>2,093</td>
<td>2,256</td>
<td>2,521</td>
<td>2,690</td>
<td>3,300</td>
<td>3,293</td>
</tr>
<tr>
<td>Household services</td>
<td>128</td>
<td>203</td>
<td>241</td>
<td>452</td>
<td>477</td>
<td>635</td>
<td>743</td>
<td>806</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>347</td>
<td>272</td>
<td>291</td>
<td>378</td>
<td>350</td>
<td>484</td>
<td>450</td>
<td>675</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>567</td>
<td>468</td>
<td>458</td>
<td>613</td>
<td>828</td>
<td>1,002</td>
<td>1,531</td>
<td>1,561</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>973</td>
<td>850</td>
<td>1,735</td>
<td>2,620</td>
<td>2,741</td>
<td>3,482</td>
<td>3,759</td>
<td>5,587</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>587</td>
<td>577</td>
<td>656</td>
<td>906</td>
<td>1,102</td>
<td>1,319</td>
<td>1,456</td>
<td>1,680</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>311</td>
<td>240</td>
<td>296</td>
<td>397</td>
<td>532</td>
<td>563</td>
<td>700</td>
<td>787</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>340</td>
<td>319</td>
<td>481</td>
<td>592</td>
<td>758</td>
<td>914</td>
<td>1,017</td>
<td>1,176</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>121</td>
<td>32</td>
<td>106</td>
<td>118</td>
<td>179</td>
<td>218</td>
<td>337</td>
<td>484</td>
</tr>
<tr>
<td>Public transportation</td>
<td>126</td>
<td>97</td>
<td>97</td>
<td>126</td>
<td>121</td>
<td>205</td>
<td>308</td>
<td>544</td>
</tr>
</tbody>
</table>

#### Debtor's Available Resources

<table>
<thead>
<tr>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>1,648</td>
<td>2,825</td>
<td>3,306</td>
<td>2,672</td>
<td>2,885</td>
<td>3,917</td>
<td>9,694</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>1,669</td>
<td>4,662</td>
<td>4,838</td>
<td>4,945</td>
<td>2,225</td>
<td>2,230</td>
<td>2,167</td>
</tr>
<tr>
<td>Other lodging</td>
<td>225</td>
<td>401</td>
<td>94</td>
<td>207</td>
<td>261</td>
<td>279</td>
<td>275</td>
</tr>
<tr>
<td>Utilities, fuels, and other charges</td>
<td>1,734</td>
<td>2,889</td>
<td>2,068</td>
<td>2,309</td>
<td>2,630</td>
<td>2,883</td>
<td>3,000</td>
</tr>
<tr>
<td>Household services</td>
<td>150</td>
<td>336</td>
<td>334</td>
<td>343</td>
<td>476</td>
<td>678</td>
<td>250</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>361</td>
<td>278</td>
<td>206</td>
<td>358</td>
<td>393</td>
<td>626</td>
<td>634</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>628</td>
<td>649</td>
<td>644</td>
<td>694</td>
<td>788</td>
<td>1,063</td>
<td>1,423</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>1,368</td>
<td>1,318</td>
<td>1,483</td>
<td>2,165</td>
<td>2,633</td>
<td>3,750</td>
<td>4,303</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>632</td>
<td>661</td>
<td>805</td>
<td>886</td>
<td>1,065</td>
<td>1,276</td>
<td>1,430</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>292</td>
<td>247</td>
<td>334</td>
<td>421</td>
<td>662</td>
<td>576</td>
<td>650</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>284</td>
<td>294</td>
<td>447</td>
<td>664</td>
<td>688</td>
<td>860</td>
<td>664</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>142</td>
<td>89</td>
<td>216</td>
<td>543</td>
<td>486</td>
<td>463</td>
<td>260</td>
</tr>
<tr>
<td>Public transportation</td>
<td>427</td>
<td>65</td>
<td>122</td>
<td>147</td>
<td>169</td>
<td>164</td>
<td>228</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Washington, D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas-Forth Worth</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,641</td>
<td>6,102</td>
<td>6,393</td>
<td>6,685</td>
<td>5,551</td>
<td>5,065</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,958</td>
<td>2,036</td>
<td>2,024</td>
<td>3,155</td>
<td>1,889</td>
<td>2,528</td>
</tr>
<tr>
<td>Other lodging</td>
<td>682</td>
<td>705</td>
<td>376</td>
<td>321</td>
<td>350</td>
<td>816</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>3,087</td>
<td>2,787</td>
<td>3,621</td>
<td>3,068</td>
<td>3,021</td>
<td>3,538</td>
</tr>
<tr>
<td>Household services</td>
<td>932</td>
<td>586</td>
<td>699</td>
<td>591</td>
<td>849</td>
<td>794</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>648</td>
<td>588</td>
<td>401</td>
<td>524</td>
<td>598</td>
<td>586</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>2,028</td>
<td>1,199</td>
<td>1,243</td>
<td>1,434</td>
<td>1,268</td>
<td>1,627</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>3,374</td>
<td>1,852</td>
<td>3,610</td>
<td>3,709</td>
<td>3,546</td>
<td>4,939</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>1,318</td>
<td>1,139</td>
<td>1,222</td>
<td>1,324</td>
<td>1,142</td>
<td>1,510</td>
</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,454</td>
<td>2,215</td>
<td>2,269</td>
<td>2,668</td>
<td>2,407</td>
<td>3,018</td>
</tr>
<tr>
<td>Public transportation</td>
<td>707</td>
<td>400</td>
<td>280</td>
<td>447</td>
<td>196</td>
<td>348</td>
</tr>
</tbody>
</table>

#### Annual Expenditures

<table>
<thead>
<tr>
<th>Washington, D.C.</th>
<th>Baltimore</th>
<th>Atlanta</th>
<th>Miami</th>
<th>Tampa</th>
<th>Dallas-Forth Worth</th>
<th>Houston</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>8,362</td>
<td>6,446</td>
<td>6,367</td>
<td>6,321</td>
<td>5,228</td>
<td>5,849</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,637</td>
<td>2,656</td>
<td>2,475</td>
<td>3,228</td>
<td>2,023</td>
<td>2,689</td>
</tr>
<tr>
<td>Other lodging</td>
<td>256</td>
<td>604</td>
<td>422</td>
<td>274</td>
<td>604</td>
<td>608</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,654</td>
<td>2,674</td>
<td>3,420</td>
<td>3,038</td>
<td>2,946</td>
<td>3,456</td>
</tr>
<tr>
<td>Household services</td>
<td>977</td>
<td>641</td>
<td>859</td>
<td>676</td>
<td>826</td>
<td>902</td>
</tr>
<tr>
<td>----------------------------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>Housekeeping and- miscellaneous supplies</td>
<td>878</td>
<td>626</td>
<td>378</td>
<td>647</td>
<td>374</td>
<td>583</td>
</tr>
<tr>
<td>Household-furnishings and equipment</td>
<td>2,054</td>
<td>4,299</td>
<td>1,310</td>
<td>4,138</td>
<td>1,213</td>
<td>4,766</td>
</tr>
<tr>
<td>Vehicle-purchase (net outlay)</td>
<td>3,266</td>
<td>4,643</td>
<td>3,564</td>
<td>3,097</td>
<td>4,886</td>
<td>6,460</td>
</tr>
<tr>
<td>Gasoline-and-motor-oil</td>
<td>1,242</td>
<td>1,382</td>
<td>1,236</td>
<td>4,315</td>
<td>2,319</td>
<td>1,696</td>
</tr>
<tr>
<td>Other-vehicle-expenses (repairs, insurance, lease, license, and other charges)</td>
<td>2,331</td>
<td>4,670</td>
<td>2,392</td>
<td>2,784</td>
<td>2,618</td>
<td>3,033</td>
</tr>
<tr>
<td>Public-transportation</td>
<td>244</td>
<td>243</td>
<td>286</td>
<td>424</td>
<td>227</td>
<td>362</td>
</tr>
</tbody>
</table>

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for a metropolitan area listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>to $9,999</th>
<th>to $14,999</th>
<th>to $19,999</th>
<th>to $25,000</th>
<th>to $39,999</th>
<th>to $49,000</th>
<th>to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Owned dwelling</td>
<td>2,588</td>
<td>1,284</td>
<td>1,794</td>
<td>2,086</td>
<td>3,158</td>
<td>4,431</td>
<td>5,193</td>
<td>7,374</td>
<td>13,009</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>2,512</td>
<td>2,909</td>
<td>3,259</td>
<td>3,735</td>
<td>3,330</td>
<td>3,448</td>
<td>3,657</td>
<td>3,006</td>
<td>2,156</td>
</tr>
<tr>
<td>Other lodging</td>
<td>222</td>
<td>218</td>
<td>209</td>
<td>239</td>
<td>293</td>
<td>270</td>
<td>352</td>
<td>472</td>
<td>1,193</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>1,570</td>
<td>1,262</td>
<td>1,668</td>
<td>1,722</td>
<td>2,085</td>
<td>2,304</td>
<td>2,530</td>
<td>2,978</td>
<td>3,653</td>
</tr>
<tr>
<td>Household services</td>
<td>256</td>
<td>188</td>
<td>345</td>
<td>292</td>
<td>472</td>
<td>516</td>
<td>641</td>
<td>806</td>
<td>1,752</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>237</td>
<td>254</td>
<td>331</td>
<td>322</td>
<td>521</td>
<td>921</td>
<td>954</td>
<td>928</td>
<td>898</td>
</tr>
<tr>
<td>Household furnishings and equipment</td>
<td>769</td>
<td>478</td>
<td>733</td>
<td>810</td>
<td>1,173</td>
<td>1,379</td>
<td>1,572</td>
<td>2,225</td>
<td>3,579</td>
</tr>
<tr>
<td>Vehicle purchases (net outlay)</td>
<td>2,229</td>
<td>1,481</td>
<td>1,644</td>
<td>1,741</td>
<td>2,450</td>
<td>3,539</td>
<td>4,517</td>
<td>5,875</td>
<td>6,742</td>
</tr>
<tr>
<td>Gasoline and motor oil</td>
<td>750</td>
<td>566</td>
<td>757</td>
<td>949</td>
<td>1,078</td>
<td>1,381</td>
<td>1,455</td>
<td>1,763</td>
<td>2,126</td>
</tr>
<tr>
<td>Vehicle maintenance and repairs</td>
<td>409</td>
<td>305</td>
<td>392</td>
<td>626</td>
<td>544</td>
<td>724</td>
<td>907</td>
<td>1,054</td>
<td>1,476</td>
</tr>
<tr>
<td>Vehicle insurance</td>
<td>353</td>
<td>361</td>
<td>419</td>
<td>621</td>
<td>727</td>
<td>933</td>
<td>1,046</td>
<td>1,171</td>
<td>1,499</td>
</tr>
<tr>
<td>Vehicle lease, license, and other charges</td>
<td>312</td>
<td>110</td>
<td>171</td>
<td>199</td>
<td>296</td>
<td>311</td>
<td>465</td>
<td>695</td>
<td>1,119</td>
</tr>
<tr>
<td>Public transportation</td>
<td>197</td>
<td>153</td>
<td>172</td>
<td>241</td>
<td>298</td>
<td>377</td>
<td>386</td>
<td>584</td>
<td>898</td>
</tr>
</tbody>
</table>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceed the applicable amount for a category shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Los Angeles</th>
<th>San Francisco</th>
<th>San Diego</th>
<th>Portland</th>
<th>Seattle</th>
<th>Anchorage</th>
<th>Phoenix</th>
<th>Denver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned dwelling</td>
<td>7,218</td>
<td>6,322</td>
<td>3,407</td>
<td>5,102</td>
<td>7,531</td>
<td>7,061</td>
<td>5,427</td>
</tr>
<tr>
<td>Rented dwelling</td>
<td>4,089</td>
<td>4,580</td>
<td>4,520</td>
<td>2,700</td>
<td>2,646</td>
<td>3,951</td>
<td>2,946</td>
</tr>
<tr>
<td>Other lodging</td>
<td>544</td>
<td>649</td>
<td>627</td>
<td>553</td>
<td>674</td>
<td>562</td>
<td>470</td>
</tr>
<tr>
<td>Utilities, fuels, and public services</td>
<td>2,558</td>
<td>2,566</td>
<td>2,608</td>
<td>2,778</td>
<td>2,687</td>
<td>2,492</td>
<td>2,703</td>
</tr>
<tr>
<td>Household services</td>
<td>947</td>
<td>1,208</td>
<td>930</td>
<td>898</td>
<td>745</td>
<td>707</td>
<td>896</td>
</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
<td>585</td>
<td>514</td>
<td>582</td>
<td>453</td>
<td>542</td>
<td>480</td>
<td>665</td>
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<tr>
<td>Household furnishings and equipment</td>
<td>2,935</td>
<td>1,510</td>
<td>2,123</td>
<td>2,003</td>
<td>1,795</td>
<td>1,410</td>
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<tr>
<td>Vehicle purchases (net outlay)</td>
<td>4,019</td>
<td>3,776</td>
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<td>1,342</td>
<td>1,142</td>
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<tr>
<td>-----------------------</td>
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<td>-------</td>
<td>-------</td>
<td>-------</td>
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</tr>
<tr>
<td>Other vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
<td>3,070</td>
<td>2,870</td>
<td>3,109</td>
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</table>

<table>
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<tr>
<th>Los-Angeles</th>
<th>San-Francisco</th>
<th>San Diego</th>
<th>Portland</th>
<th>Seattle</th>
<th>Honolulu</th>
<th>Anchorage</th>
<th>Phoenix</th>
<th>Denver</th>
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<td>Owned-dwelling</td>
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<td>8,960</td>
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<td>614</td>
<td>647</td>
<td>630</td>
<td>607</td>
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<td>Utilities, fuel, and public services</td>
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<td>2,753</td>
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<td>800</td>
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</tr>
<tr>
<td>Housekeeping and miscellaneous supplies</td>
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<td>614</td>
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<td>377</td>
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<td>667</td>
<td>692</td>
<td>650</td>
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<tr>
<td>Household furnishings and equipment</td>
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<td>4,424</td>
<td>3,040</td>
<td>6,242</td>
<td>3,632</td>
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<tr>
<td>Other-vehicle expenses (repairs, insurance, lease, license, and other charges)</td>
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<td>2,614</td>
<td>3,337</td>
<td>2,194</td>
<td>3,214</td>
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</table>

Public transportation: 508

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary.

### Debtor's Available Resources

<table>
<thead>
<tr>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apparel</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Health insurance</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Medical services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prescription drugs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical supplies</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal care products and services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Life and other personal insurance</td>
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### Annual Expenditures

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<tr>
<th>Less than $5,000</th>
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<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Apparel</td>
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<td></td>
</tr>
<tr>
<td>Health insurance</td>
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<tr>
<td>Medical services</td>
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<tr>
<td>Prescription drugs</td>
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<tr>
<td>Medical supplies</td>
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</tr>
<tr>
<td>Personal care products and services</td>
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<td></td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary.

### Debtor's Available Resources

<table>
<thead>
<tr>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apparel</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health insurance</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Medical services</td>
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</tr>
<tr>
<td>Prescription drugs</td>
<td></td>
<td></td>
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</table>

### Annual Expenditures

- 22 -
### VOLUME 32, NUMBER 1 – JULY 1, 2005

<table>
<thead>
<tr>
<th>Medical supplies</th>
<th>98</th>
<th>64</th>
<th>79</th>
<th>102</th>
<th>183</th>
<th>147</th>
<th>141</th>
<th>145</th>
<th>188</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal care products and services</td>
<td>334</td>
<td>306</td>
<td>342</td>
<td>279</td>
<td>463</td>
<td>482</td>
<td>542</td>
<td>658</td>
<td>907</td>
</tr>
<tr>
<td>Education</td>
<td>557</td>
<td>226</td>
<td>318</td>
<td>201</td>
<td>276</td>
<td>306</td>
<td>415</td>
<td>451</td>
<td>1,173</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>203</td>
<td>163</td>
<td>243</td>
<td>274</td>
<td>311</td>
<td>298</td>
<td>444</td>
<td>546</td>
<td>817</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>And over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
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<td>3,318</td>
<td>3,554</td>
<td>3,747</td>
<td>4,816</td>
<td>4,991</td>
<td>5,626</td>
<td>6,347</td>
<td>7,842</td>
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<tr>
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<td>887</td>
<td>1,000</td>
<td>1,034</td>
<td>1,077</td>
<td>1,310</td>
<td>1,449</td>
<td>1,592</td>
<td>5,129</td>
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<td>1,624</td>
<td>1,686</td>
<td>1,468</td>
<td>1,410</td>
<td>1,173</td>
<td>4,110</td>
</tr>
<tr>
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<td>900</td>
<td>474</td>
<td>431</td>
<td>888</td>
<td>611</td>
<td>299</td>
<td>277</td>
<td>281</td>
<td>982</td>
</tr>
<tr>
<td>Prescription-drugs</td>
<td>421</td>
<td>410</td>
<td>740</td>
<td>532</td>
<td>826</td>
<td>731</td>
<td>670</td>
<td>587</td>
<td>856</td>
</tr>
<tr>
<td>Medical-supplies</td>
<td>470</td>
<td>80</td>
<td>72</td>
<td>427</td>
<td>442</td>
<td>438</td>
<td>482</td>
<td>434</td>
<td>462</td>
</tr>
<tr>
<td>Personal-care-products-and-services</td>
<td>413</td>
<td>341</td>
<td>316</td>
<td>368</td>
<td>489</td>
<td>600</td>
<td>680</td>
<td>693</td>
<td>801</td>
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<td>221</td>
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<td>263</td>
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<td>928</td>
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<td>444</td>
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<td>325</td>
<td>434</td>
<td>481</td>
<td>693</td>
<td>827</td>
</tr>
</tbody>
</table>

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>And over</th>
</tr>
</thead>
<tbody>
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<td>5,993</td>
<td>6,177</td>
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<td>8,612</td>
</tr>
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<td>1,950</td>
<td>1,721</td>
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<td>3,140</td>
</tr>
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<td>499</td>
<td>820</td>
<td>957</td>
<td>1,224</td>
<td>1,351</td>
<td>1,468</td>
<td>1,722</td>
</tr>
<tr>
<td>Medical-services</td>
<td>247</td>
<td>209</td>
<td>189</td>
<td>307</td>
<td>351</td>
<td>534</td>
<td>697</td>
<td>718</td>
<td>958</td>
</tr>
<tr>
<td>Prescription-drugs</td>
<td>303</td>
<td>295</td>
<td>364</td>
<td>285</td>
<td>510</td>
<td>441</td>
<td>504</td>
<td>552</td>
<td>576</td>
</tr>
<tr>
<td>Medical-supplies</td>
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<td>31</td>
<td>71</td>
<td>84</td>
<td>65</td>
<td>100</td>
<td>92</td>
<td>111</td>
<td>177</td>
</tr>
<tr>
<td>Education</td>
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<td>194</td>
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<td>326</td>
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<td>744</td>
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<td>308</td>
<td>381</td>
<td>461</td>
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</table>

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

<table>
<thead>
<tr>
<th>Debtor's Available Resources</th>
<th>Less than $5,000</th>
<th>$5,000 to $9,999</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $39,999</th>
<th>$40,000 to $49,999</th>
<th>$50,000 to $59,999</th>
<th>And over</th>
</tr>
</thead>
<tbody>
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<td>429</td>
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<td>212</td>
<td>937</td>
</tr>
<tr>
<td>Prescription-drugs</td>
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<td>472</td>
<td>292</td>
<td>329</td>
<td>524</td>
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<td>72</td>
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<td>415</td>
<td>466</td>
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<td>406</td>
<td>433</td>
<td>615</td>
<td>842</td>
<td>693</td>
<td>896</td>
</tr>
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<td>Education</td>
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<td>278</td>
<td>352</td>
<td>404</td>
<td>548</td>
<td>900</td>
</tr>
</tbody>
</table>

-23-
VOLUME 32, NUMBER 1 – JULY 1, 2005

<table>
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<tr>
<th>Apparel</th>
<th>1,563</th>
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<th>4,593</th>
<th>3,435</th>
<th>1,679</th>
<th>1,957</th>
<th>2,463</th>
<th>3,695</th>
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<tbody>
<tr>
<td>Health insurance</td>
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<td>319</td>
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<td>1,327</td>
<td>1,346</td>
<td>1,484</td>
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<tr>
<td>Medical services</td>
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<td>184</td>
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<td>190</td>
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<td>401</td>
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<td></td>
</tr>
<tr>
<td>Medical supplies</td>
<td>36</td>
<td>35</td>
<td>32</td>
<td>49</td>
<td>50</td>
<td>86</td>
<td>143</td>
<td>153</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>426</td>
<td>482</td>
<td>391</td>
<td>476</td>
<td>524</td>
<td>533</td>
<td>590</td>
<td>573</td>
</tr>
<tr>
<td>Education</td>
<td>501</td>
<td>680</td>
<td>539</td>
<td>428</td>
<td>388</td>
<td>887</td>
<td>945</td>
<td>1,047</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>296</td>
<td>145</td>
<td>146</td>
<td>123</td>
<td>123</td>
<td>168</td>
<td>188</td>
<td>192</td>
</tr>
</tbody>
</table>

10. If the debtor’s household consists of five (5) or more persons, actual annual expenditures by the debtor’s family that exceed the applicable amount for a category, based on the debtor’s available resources, shall be presumed unnecessary.

Debtor’s Available Resources

<table>
<thead>
<tr>
<th></th>
<th>Less than $10,000</th>
<th>$10,000 to $14,999</th>
<th>$15,000 to $19,999</th>
<th>$20,000 to $29,999</th>
<th>$30,000 to $49,999</th>
<th>$50,000 to $69,999</th>
<th>$70,000 and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food</td>
<td>6,753</td>
<td>5,913</td>
<td>5,023</td>
<td>4,662</td>
<td>3,843</td>
<td>3,074</td>
<td>2,517</td>
</tr>
<tr>
<td>Apparel</td>
<td>2,749</td>
<td>1,567</td>
<td>2,273</td>
<td>1,890</td>
<td>1,811</td>
<td>1,299</td>
<td>803</td>
</tr>
<tr>
<td>Health insurance</td>
<td>326</td>
<td>635</td>
<td>444</td>
<td>435</td>
<td>747</td>
<td>1,215</td>
<td>1,401</td>
</tr>
<tr>
<td>Medical services</td>
<td>218</td>
<td>815</td>
<td>508</td>
<td>363</td>
<td>488</td>
<td>601</td>
<td>300</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>176</td>
<td>111</td>
<td>239</td>
<td>218</td>
<td>319</td>
<td>392</td>
<td>277</td>
</tr>
<tr>
<td>Medical supplies</td>
<td>45</td>
<td>142</td>
<td>34</td>
<td>11</td>
<td>44</td>
<td>74</td>
<td>123</td>
</tr>
<tr>
<td>Personal care products and services</td>
<td>443</td>
<td>405</td>
<td>503</td>
<td>524</td>
<td>526</td>
<td>557</td>
<td>653</td>
</tr>
<tr>
<td>Education</td>
<td>663</td>
<td>312</td>
<td>436</td>
<td>242</td>
<td>489</td>
<td>635</td>
<td>723</td>
</tr>
<tr>
<td>Life and other personal insurance</td>
<td>146</td>
<td>108</td>
<td>159</td>
<td>154</td>
<td>279</td>
<td>308</td>
<td>451</td>
</tr>
</tbody>
</table>

Section 5. (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor’s employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor’s disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority, as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for a lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys’ fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) A withholding under this section shall not be grounds for discharge from employment, refusal to employ or disciplinary action against an employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after proper, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, the service shall be made by:

(a) An officer authorized under KRS 454.140 to serve process; or

(b) A person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or another adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) For an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if:

(a) The person to whom the order is directed signs or refuses to sign a receipt; or

(b) His employee or agent with apparent authority signs or refuses to sign a receipt.

JOHN PRATHER, Chair
APPROVED BY AGENCY: April 11, 2005
FILED WITH LRC: April 14, 2005
CONTACT PERSON: Michael F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 758, Frankfort, Kentucky 40602-0758, phone (502) 696-7290, fax (502) 696-7293.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 14, 2005)

16 KAR 2:090. School psychologist.

RELATES TO: KRS 157.359, 161.020, 161.028 [161.026], 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS
VOLUME 32, NUMBER 1 - JULY 1, 2005

161.023(1) authorizes the Education Professional Standards board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.023(1) requires all certificates issued under KRS 161.010 to 161.125 to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the requirements for obtaining and maintaining a school psychologist certificate. [KRS 161.020, 161.029, 161.032(1), and 161.030] require that teachers and other professional school personnel hold certificates of legal qualifications and have attained the various positions and experiences issued upon completion of programs-of-preparation prescribed by the Kentucky Education and Employment Education, and approved by the Kentucky Education and Employment Standards Board (State Board for Elementary and Secondary Education). Furthermore, the teacher education institution are required to be approved for offering the preparation programs that meet the basic standards and procedures recommended by the Council for the National Association of School Psychologists Standards for Training Programs (Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval).

Section 1. Conditions and Prerequisites. (1) The Provisional and Standard Certificate for School Psychologist shall be issued in accordance with the pertinent Kentucky statutes and Education Professional Standards Board (State Board for Elementary and Secondary Education) administrative regulations in accordance with the requirements for professional education as a school psychologist to receive and maintain a valid certificate. [KRS 161.029 and 161.032(1)] require the Kentucky Council on Teacher Education and Certification, establishes an appropriate certificate and relates to the corresponding standards and procedures for program approval as included in the National Association of School Psychologists Standards for Training Programs (Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval).

(2) The Standard Certificate for School Psychologist shall be issued initially for a duration period of five (5) years and may be renewed for subsequent five (5) year periods upon completion with the School Psychologist Program and completion of four years of experience as a school psychologist to include attendance and participation in seventy-two (72) hours of continuing professional development activities. If any portion of the renewal experience is not completed, the Standard Certificate for School Psychologist may be renewed upon completion of six (6) semester hours of additional graduate credit appropriate for the position of school psychologist.

3. The Standard Certificate for School Psychologist shall be valid for serving in the position of school psychologist in the common schools and in other elementary, secondary, and vocational schools approved under the jurisdiction of the State Board for Elementary and Secondary Education, but not for any private practice outside these school situations.

Section 1. [2] The Provisional Certificate for School Psychologist shall be issued upon application to the board, using the "Form TC-1, Application for Kentucky Certification or Change in Salary Rank," and the recommendation of the [approval] program preparation institution in accordance with KRS 161 and 16 KAR Chapter 1, 2, 5, and 6 (The pertinent Kentucky statutes and Education Professional Standards Board (State Board for Elementary and Secondary Education) administrative regulations) to an applicant who has completed the approved program of preparation required program and obtained a passing score on the required assessment as set forth in 16 KAR 6.010 (forty-eight (48) semester hours of graduate credit from the approved program of preparation for the Standard Certificate for School Psychologist at a preparation institution approved under the standards and procedures included in the Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval and who in addition thereto has completed the required NTE Specialty Area Examination in school psychology with a minimum score of 630).

(2) The Provisional Certificate for School Psychologist shall be issued for a duration period of one (1) year and shall qualify the applicant for a Rank II classification as provided in KRS 157.390. The certificate may be renewed for an additional year if the individual is serving in the position of the school psychologist on a half-time basis.

(3) The Provisional Certificate for School Psychologist shall be valid for serving in a public school situation in the position of school psychologist under the supervision of the preparing institution for the Department of Elementary and Secondary Education. During the first year of service, the employer of the individual holding the Provisional Certificate for School Psychologist shall permit the individual to engage in the internship component of preparation as described by the preparing institution, in the Kentucky Standards for Preparation Certification of Professional School Personnel Program Approval for the Standard Certificate for School Psychologist.

(4) The internship may be served full-time during one (1) school year or half-time during two (2) consecutive school years.

Section 2. [3] (1) The Standard Certificate for School Psychologist shall be issued to an applicant who meets one (1) of the following requirement options:
(a) Option I: 1. Completion of an approved program of preparation which provides the applicant with at least three (3) years of experience as a school psychologist within each certification period and
(b) Option II: Possession of a valid certificate as a nationally certified school psychologist issued by the National School Psychology Certification System.

(2) The Standard Certificate for School Psychologist shall be issued for a period of five (5) years and may be renewed for subsequent five (5) year periods upon application to the board, using the Form TC-2, Application for Certificate Renewal/Duplicate, and the submission of proof of the following:
(a) 1. Completion of at least three (3) years of experience as a school psychologist within each certification period;
(b) 2. (b) Completion of seventy-two (72) hours of continuing professional development activities;
(c) 3. (c) Six (6) semester hours of graduate education related to school psychology.

(3) The Standard Certificate for School Psychologist shall be valid for serving in the position of school psychologist in the common schools and in other elementary, secondary, and vocational schools but not for any private practice outside these school settings.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Form TC-1, Application for Kentucky Certification or Change in Salary Rank," April 2004 ed.; and
(b) "Form TC-2, Application for Certificate Renewal/Duplicate," October 2003 ed.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
CONTACT PERSON: Dr. Philip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.
EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 14, 2005)

16 KAR 2:100. Junior Reserve Officers Training Corps certification.

RELATES TO: KRS 161.010, 161.020, 161.028, 161.030
STATUTORY AUTHORITY: KRS 161.028, 161.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel and KRS 161.030 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. This administrative regulation establishes the Kentucky certification for the Junior Reserve Officers Training Corps. [This administrative regulation is not required by federal law.]

Section 1. (1) The certificate for senior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:
(a) A bachelor's degree from a standard college or university as defined in KRS 161.010;
(b) Official recommendation by the appropriate branch of military service;
(c) Contract for this employment by a local school district; and
(d) Recommendation for certification by the local school superintendent.

(2) The certificate for senior instructor, Junior Reserve Officers Training Corps, may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of nine (9) semester hours to include the following:
(a) Human growth and development and learning theory;
(b) Foundations of education; and
(c) Career development and vocational planning.

(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

Section 2. (1) The certificate for junior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant upon completion of the following:
(a) High school graduation, or its equivalency as determined by an acceptable score on the General Education Development Test;
(b) Official recommendation by the appropriate branch of military service;
(c) Contract for this employment by a local school district; and
(d) Recommendation for certification by the local school superintendent.

(2) Initial Renewal. The certificate for junior instructor, Junior Reserve Officers Training Corps, may be initially renewed for a two (2) year period upon application to the board, using the "Form TC-2, Application for Certificate Renewal/Duplicate," incorporated by reference in 16 KAR 2:090, and submission of the following:
(a) Verification by the local school superintendent of two (2) years' successful experience as a Junior Reserve Officer Training Corps instructor at a local school district;
(b) Successful completion of the "New-to-Kentucky Teacher" Module and the "Substitute Teacher Orientation" Module found on www.kyeducators.org. The junior ROTC instructor shall make reasonable efforts to complete the modules within the first ninety (90) days of employment with the local school district; and
(c) Successful completion of a minimum of twenty-four (24) clock hours of district-approved professional development annually, or
(d) Successful [upon recommendation by the local school superintendents and upon completion of six (6) [fifteen- to sixteen-) semester hours from a standard college or university as defined in KRS 161.010 to include the following:
1. (a) Human growth and development and learning theory; and
2. (b) Foundations of education; and
3. (c) Career development and vocational planning.

Each subsequent two (2) year renewal thereafter shall require completion by September 1 of the year of expiration of the following:
(a) Six (6) [fifteen- to sixteen-) semester hours selected from an associate degree program from a standard college or university as defined in KRS 161.010; or
(b) Twenty-four (24) clock hours of district-approved professional development annually.

(4) Upon completion of the associate degree with a 2.5 grade point standing, the certificate for junior instructor, Junior Reserve Officers Training Corps, shall be renewed for a five (5) year period. Each five (5) year renewal thereafter shall require completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

(5) A junior instructor who renews the certificate for junior instructor, Junior Reserve Officers Training Corps by completing the twenty-four (24) hours of professional development annually shall not be eligible to receive the five (5) year certificate as noted in subsection (4) of this section, but shall be granted a certificate of two (2) years in duration.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
CONTACT PERSON: Dr. Philip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfurt, Kentucky 40601, phone (502) 564-4806, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 14, 2005)


RELATES TO: KRS 156.101, 156.169, 161.020, 161.028 [161.028], 161.030
STATUTORY AUTHORITY: KRS 161.020, 161.028, [161.028, 161.030]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the board [KRS 161.028, 161.028 [161.028]], 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education]. This administrative regulation establishes the preparation and certification program for guidance counselors, at all grade levels [established an appropriate certificate for guidance counseling and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation Certification of Professional School Personnel].

Section 1. Conditions and Prerequisites. (1) The provisional and standard certificate for guidance counselor shall be issued in accordance with KRS Chapter 161 and 16 KAR Chapters 3 and 8 [the pertinent Kentucky standards and Education Professional Standards Board [State Board for Elementary and Secondary Education] [administrative regulations]] to an applicant who has completed the approved program of preparation which corre-
VOLUME 32, NUMBER 1 – JULY 1, 2005

spends to the certificate at a teacher education institution approved in accordance with 16 KAR 6:010 [under the standards and procedures established by the Education--Professional Standards Board] [included in the Kentucky Standards for the Preparation Certification of Professional School Personnel, as adopted in 16 KAR 5:013, TEC 77-0].

2. The guidance counseling program shall be subject to the program approval requirements established in 16 KAR 5:010 and shall incorporate the Kentucky Standards for Guidance Counselor Programs, incorporated by reference in 16 KAR 5:010.

3. The provisional and standard certificate for guidance counselor established under the administrative regulation shall be valid for the position of guidance counselor for all grade levels, primary through grade twelve.

Section 2. The provisional certificate for guidance counselor shall be issued to an applicant on completion of an approved master's level program in guidance counseling, [2] The prerequisites for guidance counseling certification shall include the following:

(a) A Kentucky teaching certificate as follows:

1. For guidance counseling grades K-8, a certificate valid for classroom teaching at the elementary level, grades 1-8, K-4, or K-8.

2. For guidance counseling grades 5-12, a certificate valid for classroom teaching in the middle grades 5-8 or at the secondary level, grades 5-12 or 9-12.

3. Teachers who hold a Kentucky teaching certificate valid for teaching--art, music, physical education, special education, or school media librarian in grades K-12 may complete the curriculum for K-8 guidance counseling or 5-12 guidance counseling, providing the applicant has teaching experience corresponding to the grade range of the guidance counseling curriculum to be completed.

(b) One (1) year of successful full-time classroom teaching experience.

(c) Persons who have completed an approved master's degree preparation certification program for guidance counseling in another state which does not require classroom teaching certification and teaching experience may satisfy the prerequisites with three (3) years of experience as a guidance counselor.

(2) (3) The provisional certificate for guidance counselor shall be issued for a (duration) period of five (5) years and may be renewed upon application to the board, using the "Form TC-2, Application for Certificate Renewal Duplicate," incorporated by reference in 16 KAR 2:090, and submission of proof of the completion of a minimum of nine (9) semester hours of graduate credit in the areas of counseling or guidance counseling [every five (5) years selected from the program leading to the standard certificate for guidance counselor].

(3) [4] If [Whenever] there is a lapse of [in] a provisional certificate for guidance counselor for lack of meeting the renewal requirements, certification may be rescinded at a later date upon application to the board, using the "Form TC-2, Application for Certificate Renewal Duplicate," incorporated by reference in 16 KAR 2:090, and the submission of proof of the completion of [by-first-completing] a minimum of nine (9) semester hours of graduate credit for each five (5) year period of validity or period of lapse of the guidance counselor certificate. The graduate credit shall be in the areas of counseling or guidance counseling [applicable to the Standard Certificate for Guidance Counselor].

[Applicants who have completed the program of preparation for guidance counseling in grades K-8 may qualify for guidance counseling in grades 5-12 by completing a minimum of six (6) semester hours of coursework which includes the following:

1. Human behavior, development, and learning for secondary pupils.

2. Instructional design and curriculum for secondary-school pupils.

3. Career development and vocational planning for secondary-school pupils.

4. A practicum experience at the high-school level prior to employment at that level.]

Section 3. (1) The standard certificate for guidance counselor shall be issued to an applicant who meets one of the following qualification options:

(a) Option I:

1. Successful completion of an approved master's level program in guidance counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program.

3. One (1) year of full-time employment as a provisionally certified guidance counselor in a public school or nonpublic school which meets the state performance standards as established in KRS 156.180 or which has been accredited by a regional or national accrediting association;

4. A valid Kentucky Professional teaching certificate; and

5. A minimum of one (1) year of full-time classroom teaching experience on a Professional Teacher Certificate in a public school or nonpublic school which meets the state performance standards as established in KRS 156.180 or which has been accredited by a regional or national accrediting association;

(b) Option II:

1. Successful completion of an approved master's level program in guidance counseling;

2. Successful completion of an additional three (3) to six (6) credit hours from an approved graduate level counseling or guidance counseling program; and

3. A minimum of two (2) years of successful employment as a provisionally full-time certified guidance counselor; and [Applicants who have completed the program of preparation for guidance counseling in grades 5-12 or 9-12 may qualify for guidance counseling in grades K-8 by completing a minimum of six (6) semester hours of coursework which includes the following:

1. Human behavior, development, and learning for elementary school pupils;

2. Instructional design and curriculum for elementary school pupils;

3. Career development and vocational planning for elementary school pupils;

4. A practicum experience in the elementary grades prior to employment at that level.]

Section 4. (1) The standard certificate for guidance counselor shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary Education administrative regulations to an applicant who has completed the approved program of preparation for guidance counseling which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation Certification of Professional School Personnel as adopted in 16 KAR 5:013, TEC 77-0.

(2) A prerequisite for the standard certificate for guidance counselor shall be one (1) year of experience as a full-time guidance counselor.

(3) The standard certificate for guidance counselor shall be issued for a duration period of five (5) years and shall be renewed subsequently for five (5) year periods upon completion of, by September 1 of the year of expiration, the Effective Instructional Leadership Act (EILA) hours as specified by the Kentucky Department of Education in KRS 156.101, [of a minimum of sixty-six (66) clock hours of appropriate counselor role specific training.] It shall be the responsibility of the guidance counselor to provide documentation of this training to the local school superintendent who recommends certificate renewal. [Six (6) semester hours of additional graduate credit in counseling related coursework may be substituted in lieu of the sixty (60) clock hours.]

(4) [4] Whenever there is a lapse in the standard certificate for guidance counselor for lack of meeting renewal requirements, the certificate may be rescinded at a later date [under current administrative regulations] by first completing twelve (12) clock hours of counselor role specific training for each year since the expiration of the certificate up to a maximum of seventy-five (75) clock hours or nine (9) semester hours of additional graduate credit appropriate to position of guidance counselor.

Section 4. Implementation Dates. (1) The provisions for the issuance of the provisional and standard certificate for guidance
counselor, all grades, shall apply to a student admitted to a pro-
(2)(a) A candidate admitted by September 1, 2003 to an
approved preparation program for guidance counselor (under
prior versions of this administrative regulation) shall complete the
program by December 31, 2006.
(b) A candidate formally admitted by September 1, 2003,
to an approved preparation program for guidance counselor (under
a previous version of this regulation) shall be eligible for the guid-
ance counselor certificate, all grades upon
1. Completion of the program in which the candidate is enrolled as
identified in the subsection;
2. Successful completion of an approved additional three (3) to
six (6) credit hours from an approved graduate level counsel-
ing or guidance counseling program (graduate semester hours).
The additional graduate semester hours shall be designed to ad-
dress content of the preparation program not previously addressed
and which provides the candidate with knowledge relevant to
counseling all grades; and
3. A recommendation from the institution of higher education
for the appropriate certificate.
(3) A recommendation from the institution of higher educa-
tion for the appropriate certificate. (a) An individual who holds a valid Kentucky provisional or
standard guidance counselor certificate, grades K-8, grades 7-12, or
grades 5-12 shall be eligible to extend that certificate to a provi-
sional or standard guidance counselor certificate, all grades, upon
application and proof of the following:
(a) A successful completion of an additional three (3) to six
(6) credit hours from an approved graduate level counseling
or guidance counseling program (graduate semester hours from
an approved course of study for a professional education position). The additional
graduate semester hours shall be designed to address content of
the preparation program not already addressed and for the grade
range sought by the extension; and
(b) A recommendation from the institution of higher education
for the appropriate certificate [in accordance with the require-
ments established by existing statutes and regulations].
Section 5 Validity of Prior Certificates. (1) A valid Provisional
or Standard Certificate for Guidance Counselor grades K-8 issued
prior to the effective date (under prior versions) of this adminis-
trative regulation shall be valid for the position of guidance coun-
selor for grades K-8 and also for any other school configurations
having sequential combination of the grades K-12 that includes
any grade K-8.
(2) A valid Provisional or Standard Certificate for Guidance
Counselor grades 5-12 issued prior to the effective date (under
prior versions) of this administrative regulation shall be valid for
the position of guidance counselor for grades 5-12 and also for any
other school configurations having sequential combination of
the grades K-12 that includes any grade 5-12.
LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
CONTACT PERSON: Dr. Phillip Rogers, Education Profes-
sional Standards Board, 100 Airport Road, 3rd Floor, Frankfort,
Kentucky 40601, phone (502) 564-4506, fax (502) 564-7080.
EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARS, June 14, 2005)
16 KAR 4:010. Qualifications for professional school posi-
tions.
161.028(1) authorizes the Education Professional Standards
Board to establish standards and requirements for obtaining
and maintaining a teaching certificate and for programs of
preparation or teachers and other professional school per-
sonnel, and KRS 161.030(4) requires all certificates issued
under KRS 161.010 to 161.126 to be issued in accordance with
the administrative regulations of the board. [KRS 161.020 re-
quires appropriate certification for a professional education position
in a Kentucky public school.] This administrative regulation estab-
lishes certificate qualifications for the positions in a local school
district for which a specific certificate is not available.
Section 1. This administrative regulation shall not apply to a
position for which a specific certificate is available under another
administrative regulation promulgated by the board in KAR Title 16;
Section 2 School Business Administrator. The qualifications for
the position of school business administrator shall be one (1) of
the following:
(1) Kentucky certification for school superintendent;
(2) A bachelor's or advanced degree in business; or
(3) Valid Kentucky certification for school business admin-
istrator issued prior to September 1, 1994.
Section 3. Director of Districtwide Services. A director of dis-
tricwide services shall qualify for this position on the basis of cer-
tification either as a school superintendent, supervisor of instruction,
school business administrator, or principal; and
Section 4. Director of Federally Supported Programs. A direc-
tor of federally supported programs shall qualify for this position on
the basis of certification either as a school superintendent, supervi-
sor of instruction, or school principal.
Section 5. Consultant. A consultant in elementary education,
special education, or in an academic subject field shall qualify for
the position on the basis of the following:
(1) Master's degree or nondegree fifth-year program;
(2) Certification in the appropriate subject field or service area;
and
(3) Three (3) years of teaching experience in the appropriate
subject field or service area
Section 6. Reading Program Consultant. A reading program
consultant shall qualify for the position on the basis of certification
for a reading specialist.
Section 7. Gifted Education Coordinator. A gifted education
coordinator shall qualify for the position on the basis of the follow-
ing:
(1) A master's degree or nondegree fifth-year program;
(2) A certificate endorsement for teacher of gifted education; and
(3) Three (3) years of teaching experience.
Section 8. Special Education Work Study Program Coordina-
tor. A special education work study program coordinator shall qual-
ify for the position on the basis of certification as a teacher of
exceptional children.
Section 9. Professional Development Coordinator. The profes-
sional development coordinator shall qualify for the position on the
basis of certification as a principal or supervisor of instruction.
Section 10. Instructional Television Coordinator. An instruc-
tional television coordinator shall qualify for the position on the
basis of certification for classroom teaching.
Section 11. Instructional Coordinator. The instructional coordi-
nator shall qualify for the position on the basis of certification for
supervisor of instruction or school principal at the appropriate level.
Section 12. School Health Coordinator. A school health coordi-
nator shall qualify for the position on the basis of certification for
classroom teaching or certification for school nurse.

Section 13. Chapter I Remedial Mathematics. A teacher holding a valid early elementary certificate, grades K-4, shall qualify for teaching mathematics in a Chapter I program in grades 5-8.

Section 14. Teachers for Alternative Schools. A classroom teacher in an alternative school shall qualify on the basis of a certificate valid for classroom teaching.

Section 15. Instructional Technology Director. An instructional technology director shall qualify on the basis of a certificate valid for classroom teaching.

Section 16. Federal Grant Coordinator - School Level A federal grant coordinator at the school level shall qualify on the basis of a certificate valid for classroom teaching.

Section 17. Job Training Partnership Act Teacher. A teacher in the JTPA Program shall qualify on the basis of a certificate valid for classroom teaching.

Section 18. Family Resource Center Director. A family resource center director shall qualify on the basis of a certificate valid for classroom teaching or for administration [valid certificate issued by the Educational Professional Standards Board if the position is reported as certified].

Section 19. Migrant Advocate. A migrant advocate shall qualify on the basis of a certificate valid for classroom teaching.

Section 20. Home and Hospital Teacher. A home and hospital teacher shall qualify on the basis of a certificate valid for classroom teaching.

Section 21. Dean of Students. A dean of students shall qualify on the basis of an instructional leadership certificate - school principal.

Section 22. Testing Coordinator. A testing coordinator shall qualify on the basis of an individual intellectual assessment certificate, psychometrist certificate, supervisor certificate, or guidance certificate.

Section 23. District Assessment Coordinator. A district assessment coordinator shall qualify on the basis of certification either as a school superintendent, supervisor of instruction, or school principal.

Section 24. Highly-Skilled Educator. (1) A highly-skilled educator shall qualify on the basis of qualifications established by the Kentucky Department of Education pursuant to KRS 158.782 and 704 KAR 4.030

(2)(a) Successful experience as a highly-skilled educator since July 1, 1998 shall be considered administrative experience for purposes of advanced administrative certification.

(b) The Education Professional Standards Board shall review the certification qualifications established in this subsection if any of the following requirements of the highly-skilled educator program are substantially revised by the General Assembly or the Kentucky Department of Education:

1. Selection criteria;
2. Training requirements; or
3. Functions and responsibilities.

Section 25. Athletic Director. An athletic director, if serving in a position paid from the certified salary schedule, shall qualify on the basis of a certificate valid for classroom teaching or for administration.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
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EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 14, 2005)

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs.

STATUTORY AUTHORITY: KRS 161.028(4)(b), 161.030(4), (10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126 to be issued in accordance with the administrative regulations of the Board. This administrative regulation establishes the requirements for obtaining and maintaining a school psychologist certificate. KRS 161.028(4)(b) requires that an educator preparation institution be approved for offering a preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030(2) and (4) require that a certificate be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for accreditation of an educator preparation unit and approval of a program to prepare an educator.

Section 1. Definitions. (1) "AACTE" means the American Association of Colleges for Teacher Education.

(2) "Biennial report" means the report prepared by the EPSB summarizing the institutionally-prepared annual reports for a two (2) year period.

(3) "Board of examiners" means the team who reviews an institution on behalf of NCATE or EPSB.

(4) [(g)] "EPSB" means the Education Professional Standards Board.

(5) [(h)] "NCATE" means the National Council for Accreditation of Teacher Education.

(6) [(i)] "NCATE accreditation" means a process for assessing and enhancing academic and educational quality through voluntary peer review.

(7) [(j)] "State accreditation" means the EPSB that an institution has a professional education unit that has met accreditation (quality) standards as a result of review, including an on-site team review.

(8) [(k)] "Third-year report" means the report summarizing the institutionally-prepared annual reports for a three (3) year period and prepared by NCATE or the EPSB.

Section 2. Accreditation Requirements. (1) An institution offering an educator certification program or a program leading to a rank change:

(a) Shall be accredited by the state; and
(b) May be accredited by NCATE;

(2) State accreditation shall be:

(a) A condition of offering an educator certification program or a program leading to a rank change; and
(b) Based on the national accreditation standards which include the program standards enumerated in KRS 161.028(1)(b), and which are set out in the "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education" established by NCATE. The accreditation standards shall include:

1. Standard 1 - Candidate Knowledge, Skills, and Dispositions. Candidates preparing to work in schools as teachers or other professional school personnel know and demonstrate the content, pedagogical, and professional knowledge, skills, and dispositions necessary to help all students learn. Assessments indicate that candidates meet professional, state, and institutional standards.
2. Standard 2 - Assessment System and Unit Evaluation. The unit has an assessment system that collects and analyzes data on applicant qualifications, candidate and graduate performance, and unit operations to evaluate and improve the unit and its programs.
3. Standard 3 - Field Experience and Clinical Practice. The unit and its school partners design, implement, and evaluate field experiences and clinical practice so that teacher candidates and other school personnel develop and demonstrate the knowledge, skills, and dispositions necessary to help all students learn.
4. Standard 4 - Diversity. The unit designs, implements, and evaluates curricula and experiences for candidates to acquire and apply the knowledge, skills, and dispositions necessary to help all students learn. These experiences include working with diverse higher education and school faculty, diverse candidates, and diverse students in P-12 schools.
5. Standard 5 - Faculty Qualifications, Performance, and Development. Faculty are qualified and model best professional practices in scholarship, service, and teaching, including the assessment of their own effectiveness as related to candidate performance; they also collaborate with colleagues in the disciplines and schools. The unit systematically evaluates faculty performance and facilitates professional development.
6. Standard 6 - Unit Governance and Resources. The unit has the leadership, authority, budget, personnel, facilities, and resources including information technology resources, for the preparation of candidates to meet professional, state, and institutional standards.

(3) NCATE accreditation shall not be a condition of offering an educator certification program or a program leading to a rank change.

(4) All educator preparation institutions and programs operating in Kentucky that require licensure by the Council on Postsecondary Education under KRS 164.945-164.947 and 13 KAR 1.020 shall:
(a) Be accredited by the state through the EPBS under this administrative regulation as a condition of offering an educator certification program or a program leading to rank change, and
(b) Comply with the EPBS "Accreditation of Preparation Programs (Policy and Procedure)".

Section 3. Developmental Process for New Educator Preparation Programs. (1) New educator preparation institutions requesting approval from the EPBS to develop educator preparation programs that do not have a historical foundation from which to show the success of candidates or graduates as required under Section 9 of this administrative regulation shall follow:
(a) Follow the four (4) stage developmental process established in this section to gain temporary authority to admit candidates, and
(b) Comply with the "Accreditation of New Teacher Preparation Institutions-Policy and Procedure".

(2) Stage One.
(a) The educator preparation institution shall submit an official letter from the chief executive officer and the governing board of the institution to the EPBS indicating their intent to establish an educator preparation program.
(b) The EPBS staff shall make a technical visit to the institution.
(c) The institution shall submit the following documentation:
1. Program descriptions required by Section 11 of this administrative regulation;
2. Continuous assessment plan required by Section 11 of this administrative regulation; and
3. Fulfillment of Preconditions 1, 2, 3, 5, 7, 8, and 9 established in Section 9 of this administrative regulation.
(d) The EPBS shall provide for a paper review of this documentation by the Reading Committee and the Continuous Assessment Review Committee.
(e) Following review of the documentation, EPBS staff shall make an additional technical visit to the institution.

(3) Stage Two.
(a) A board of examiners team shall make a one (1) day visit to the institution to verify the paper review.
(b) The team shall be comprised of:

1. One (1) representative from a public postsecondary institution;
2. One (1) representative from an independent postsecondary institution, and
3. One (1) representative from the Kentucky Education Association.
(c) The team shall submit a written report of its findings to the EPBS.
(d) The EPBS shall provide a copy of the written report to the institution.

(e) The institution may submit a written rejoinder to the report within thirty (30) working days of its receipt.
2. The rejoinder may be supplemented by materials pertinent to the conclusions found in the team's report.

(2) The Accreditation Audit Committee shall review the materials gathered during Stage One and Two and make one (1) of the following recommendations to the Program and Technical Assistance Work Group of the EPBS with regards to temporary authorization:
1. Approval;
2. Approval with conditions; or
3. Denial of approval.

(4) Stage Three.
(a) The EPBS shall review the materials and recommendations from the Accreditation Audit Committee and make one (1) of the following determinations with regards to temporary authorization:
1. Approval;
2. Approval with conditions, or
3. Denial of approval.
(b) An institution receiving approval or approval with conditions shall:
1. Hold this temporary authorization for two (2) years; and
2. Continue the developmental process and the first accreditation process established in this administrative regulation. Continue the development process and the full initial accreditation process established in this administrative regulation.

(3) An institution denied temporary authorization may reapply.
(d) During the two (2) year period of temporary authorization, the institution shall:
1. Admit candidates;
2. Monitor, evaluate, and assess the academic and professional competency of candidates; and
3. Report regularly to the EPBS on the institution's progress.
(e) During the two (2) year period of temporary authorization, the EPBS shall:
1. May schedule additional technical visits; and
2. Shall monitor progress by paper review of annual reports, admission and exit data, and trend data.

(5) Stage Four.
(a) The institution shall host a first accreditation visit within two (2) years of the approval or approval with condition of temporary authorization.
(b) All further accreditation activities shall be governed by the remaining sections of this administrative regulation, which govern the first accreditation of an educator preparation institution.

Section 4. Schedule and Communications. (1) The EPBS shall send an accreditation and program approval schedule to each educator preparation institution no later than August 1 of each year. The first accreditation cycle shall provide for an on-site continuing accreditation visit at a five (5) year interval. The regular accreditation cycle shall provide for an on-site continuing accreditation visit at a seven (7) five (5)-year interval.

(2) The accreditation and program approval schedule shall be directed to the official designated by the institution as the head of the educator preparation unit with a copy to the president and the chief academic officer. The head of the educator preparation unit shall disseminate the information to administrative units within the institution, including the appropriate college, school, department, and office.

(3) The EPBS shall annually place a two (2) year schedule of on-site accreditation visits for a Kentucky institution in the agenda materials and minutes of an EPBS business meeting.
(4) The EPSB shall coordinate dates for a joint state and NCATE accreditation on-site visit.

(5) At least six (6) months prior to a scheduled on-site visit, an institution seeking NCATE accreditation shall give public notice of the upcoming visit.

(6) The governance unit for educator preparation shall be responsible for the preparation necessary to comply with the requirements for timely submission of materials for accreditation and program approval as established in this administrative regulation.

Section 5. Annual Reports. (1)(a) Each institution shall report annually to the EPSB to provide data about faculty and students in each approved program, progress made in addressing areas for improvement identified by its last accreditation evaluation, and major program developments in each NCATE standard [category of standards]

(b) The institution shall use the data system identified by professional Education Data System for submitting required data to the EPSB.

(2)(a) The EPSB shall review each institution's annual report to monitor the capacity of a unit to continue a program of high quality.

(b) The EPSB may pursue action against the unit based on data received in this report.

(3) The Reading Committee shall submit a biennial [third-year] report, based on data submitted in the annual reports, to the unit head in preparation for an on-site accreditation visit.

Section 6. Content Program Review Committee. (1)(a) The EPSB shall appoint and train a content program review committee in each of the certificate areas to provide content area expertise to EPSB staff and the Reading Committee.

(b) Nominations for the content program review committees shall be solicited from the education constituent [stakeholder] groups listed in Section 12 of this administrative regulation.

(2)(a) A content program review committee shall review an educator preparation program to establish congruence of the program with standards of nationally-recognized specialty program associations and appropriate state performance standards.

(b) A content program review committee shall examine program content and faculty expertise, and conceptual framework rationale.

(3) A content program review committee shall submit written comments to EPSB staff and the Reading Committee for use in the program approval process.

(4) A content program review committee shall not make any determination or decision regarding the approval or denial of a program.

Section 7. Continuous Assessment Review Committee. (1) The EPSB shall appoint and train a Continuous Assessment Review Committee to be comprised of P-12 and postsecondary faculty who have special expertise in the field of assessment.

(2) The Continuous Assessment Review Committee shall conduct a preliminary review of each institution's continuous assessment plan [for:]

(a) Accuracy;
(b) Timeliness; and
(c) Conformity with the corresponding standards.

(3) The Continuous Assessment Review Committee shall meet in the spring and fall semesters of each year to analyze the continuous assessment plan for those institutions that are within one (1) year of their on-site visit.

(4) The Continuous Assessment Review Committee shall provide technical assistance to requesting institutions in the design, development, and implementation of the continuous assessment plan.

Section 8. Reading Committee. (1) The EPSB shall appoint and train a Reading Committee representative of the constituent groups to the EPSB.

(2) The Reading Committee shall conduct a preliminary review of accreditation materials, annual reports, and program review documents from an educator preparation institution for adequacy, timeliness, and conformity with the corresponding standards.

(3) For first accreditation, the Reading Committee shall:
(a) Review the preconditions documents prepared by the institution; and
(b) Send to the EPSB a preconditions report indicating whether a precondition has been satisfied by documentation. If a precondition has not been met, the institution shall be asked to revise or send additional documentation. A preconditions report stating that the preconditions have been met shall be inserted into the first section of the institutional report.

(4) For continuing accreditation and program approval, the Reading Committee shall:
(a) Determine that a submitted material meets requirements;
(b) Ask that EPSB staff resolve with the institution a discrepancy or omission in the report or program;
(c) Refer an unresolved discrepancy or omission to the on-site accreditation team for resolution; or
(d) Recommend that the evaluation and approval process be terminated as a result of a severe deficiency in the submitted material.

(5) The EPSB shall discuss a recommendation for termination with the originating institution. The institution may submit a written response to the EPSB which shall be presented, with the Reading Committee comments and written accreditation and program, by EPSB staff to the EPSB Program and Technical Assistance Committee for recommendation to the full EPSB.

Section 9. Preconditions for First Unit Accreditation. (1) Eighteen (16) months prior to the scheduled on-site visit of the evaluation team, the educator preparation institution shall submit information to the EPSB, and to NCATE if appropriate, documenting the fulfillment of the preconditions for the accreditation of the educator preparation unit, as established in sub-section (2) of this section.

(2) As a precondition for experiencing an on-site first [initial] evaluation for educator preparation, the institution shall present documentation to show that the following conditions are satisfied:
(a) Precondition Number 1. The institution recognizes and identifies a professional education unit that has responsibility and authority for the preparation of teachers and other professional education personnel [A written description of the professional education unit outlines the unit's responsibilities and authority for the preparation of teachers and other professional education personnel. Required documentation shall include:
1. A letter from the institution's chief executive officer that designates the unit as having [with] primary authority and responsibility for professional education programs,
2. A chart or narrative that lists all professional education programs offered by the institution, including any nontraditional and alternative programs. The chart or narrative report shall [should] depict:
   a. The degree or award levels for each program; [An organizational chart of the unit that includes the programs located administratively within the unit, including nontraditional, alternative and off-campus programs.]
   b. The administrative location for each program; and [The organizational chart (or a second one (1)) shall indicate the relationship of the unit to other administrative units at the college or university.]
   c. The structure or structures through which the unit implements its oversight of all programs;
3. If the unit's offerings include off-campus programs, a separate chart or narrative as described above, shall be prepared for each location at which off-campus programs are geographically located [A list of all professional education programs offered by the institution, including nontraditional, alternative and off-campus programs. The list shall indicate the geographic location of the programs and the degrees offered]; and
4. An organizational chart of the institution that depicts the professional education unit and indicates the unit's relationship to other administrative units within the college or university [A chart depicting the structure of the unit within the institution and its oversight of nontraditional, alternative and off-campus programs].
(b) Precondition Number 2. A dean, director, or chair is officially designated as head of [represent] the unit and is assigned the authority and responsibility for its overall administration and...
operation. The institution shall submit a job description for the head of the professional education unit.

(c) Precondition Number 3. Written policies and procedures guide the operations of the unit. Required documentation shall include cover page and table of contents for codified policies, bylaws, procedures, and student handbooks.

(d) Precondition Number 4. The unit has a well-developed [and] conceptual framework that establishes the shared vision for an institution's efforts in preparing educators to work in P-12 schools and provides direction for programs, courses, teaching, candidate performance, scholarship, service, and unit accountability. Required documentation shall include:

1. The vision and mission of the institution and the unit;
2. The unit's philosophy, purposes, [professional-commitments], and goals [expectations];
3. Knowledge bases [bases] including theories, research, the wisdom of practice, and education policies, that inform the unit's conceptual framework;
4. Candidate proficiencies aligned with the expectations [Performance-outcomes for candidates, including those in professional, state, and institutional standards; and]
5. A description of the system by which the candidate proficiencies described are [performance is] regularly assessed.

(e) Precondition Number 5. The unit regularly monitors and evaluates its operations [operation], the quality of its offerings, the performance of candidates, and the effectiveness of its graduates [state and institutional standards of the performance of candidates and graduates]. Required documentation shall include a description of the unit's assessment and data collection systems that support unit responses to Standards 1 and 2 established in Section 2(2)(b)(1) and 2 of this administrative regulation.

(f) Precondition Number 6. The unit has published criteria for admission to and exit from all initial teacher preparation and advanced programs and can provide summary reports of candidate performance at exit [all initial-educator-preparation-and-advanced programs]. Required documentation shall include:

1. A photocopy of published documentation (e.g., from a catalog, student teaching handbook, application form, or web page) listing the basic [set of] requirements for entry to, retention in, and completion of professional education programs offered by the institution [admission into all-initial-educator-preparation-and-advanced-programs], including any nontraditional, alternative, and off-campus programs; and
2. A brief summary of candidate performance on assessments conducted for admission into programs and exit from them. This summary shall include:
   a. The portion of Title II documentation related to candidate admission and completion that was prepared for the state; and
   b. A compilation of results on the unit's own assessments.

(g) Precondition Number 7. The unit's programs are approved by the appropriate state agency or agencies and the unit's summary pass rate meets or exceeds the required state pass rate of eighty (80) percent. Required documentation shall include; [copies of the most recent approval letters from the EPSB and CPE attesting that state standards have been met, and listing approved programs]

1. The most recent approval letters from the EPSB and CPE, including or appended by a list of approved programs. If any program is not approved, the unit shall [must] provide a statement that it is not currently accepting new applicants into the non-approved program or programs. For programs that are approved with qualifications or are pending approval, the unit shall [must] describe how it will bring the program or programs into compliance; and
2. Documentation submitted to the state for Title II, indicating that the unit's summary pass rate on state licensure examinations meets or exceeds the required state pass rate of eighty (80) percent. If the required state pass rate is not evident on this document, it shall [should] be provided on a separate page.

(h) Precondition Number 8. If the institution has chosen to pursue dual accreditation from both the state and NCATE and receive national recognition for a program or programs, the institution shall submit its programs for both state and national review.

(i) Precondition Number 9. The institution is accredited without probation or an equivalent status, by the appropriate institutional accrediting agency recognized by the U.S. Department of Education. Required documentation shall include a copy of the current [regional] accreditation letter or report that indicates institutional accreditation status.

Section 10. Institutional Report. (1) For a first accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a written narrative describing the unit's conceptual framework and evidence that demonstrates the six (6) standards are met. The written narrative may be supplemented by a chart, graph, diagram, table, or other similar means of presenting information. The institutional report, including appendices, shall not exceed 100 pages in length. The report shall be submitted to the EPSB and to NCATE, if appropriate.

(2) For a continuing accreditation visit, the educator preparation unit shall submit, two (2) months prior to the scheduled on-site visit, a report not to exceed 100 pages addressing changes at the institution that have occurred since the last accreditation visit, a description of the unit's conceptual framework, and evidence that demonstrates that the six (6) standards are met. [The report shall be submitted to the EPSB and to NCATE, if appropriate.] The narrative shall describe how changes relate to an accreditation standard and the results of the continuous assessment process, including program evaluation. The report shall be submitted to the EPSB and to NCATE, if appropriate.

Section 11. Program Review Documents. Eighteen (18) months for first accreditation and twelve (12) months for continuing accreditation in advance of the scheduled on-site evaluation visit, the educator preparation unit shall prepare and submit to the EPSB for each separate program of educator preparation for which the institution is seeking approval a concise description which shall provide the following information:

1. The unit's conceptual framework for the preparation of school personnel which includes:
   a. The mission of the institution and unit;
   b. The unit's philosophy, purposes, professional commitments, and dispositions;
   c. Knowledge bases, including theories, research, the wisdom of practice, and education policies;
   d. Performance expectations for candidates, aligning the expectations with professional, state, and institutional standards;
   e. The system by which candidate performance is regularly assessed;

2. The unit's continuous assessment plan that provides:
   a. An overview of how the unit will implement continuous assessment to assure support and integration of the unit's conceptual framework;
   b. Each candidate's mastery of content prior to exit from the program, incorporating the assessment of the appropriate performance standards;
   c. Assessment of the program that includes specific procedures used to provide feedback and make recommendations to the program and unit;
   d. A monitoring plan for candidates from admission to exit;
   e. Program experiences including the relationship among the program's courses and experiences, content standards of the relevant national specialty program associations (e.g., National Council of Teachers of Mathematics, National Council for the Social Studies, The Council for Exceptional Children, North American Association for Environmental Education, etc.), student academic expectations as established in 730 KAR 4:050, and relevant state performance standards established in 16 KAR 1:101 or incorporated by reference into this administrative regulation;

3. Identification of how the program integrates the unit's continuous assessment to assure each candidate's mastery, prior to exit from the program, of content of the academic discipline, and state performance standards established in 16 KAR 1:101; and

4. Identification of how the program utilizes performance assessment to assure that each candidate's professional growth is consistent with the New and Experienced Teacher Standards as established in 16 KAR 1:101;

5. A list of faculty responsible for and involved with the con-
duct of the specific program, along with the highest degree of each, responsibilities for the program, and status of employment within the unit and the university; and
(6) A curriculum guide sheet or contract provided to each student before or at the time of admittance to the program.

Section 12. Board of Examiners (1) A Board of Examiners shall,
(a) Be recruited and appointed by the EPSB. The board shall be comprised of an equal number of representatives from three (3) constituent [constituency] groups:
1. Teacher educators;
2. P-12 teachers and administrators; and
3. State and local policymaker groups; and
(b) Include at least thirty-six (36) members representing the following constituencies; 
1. Kentucky Education Association, at least ten (10) members; 
2. Kentucky Association of Colleges of Teacher Education, at least ten (10) members; and
3. At least ten (10) members nominated by as many of the following groups as may wish to submit a nomination:
   a. Kentucky Association of School Administrators;
   b. Persons holding positions in occupational education,
   c. Kentucky Branch National Congress of Parents and Teachers;
   d. Kentucky School Boards Association;
   e. Kentucky Association of School Councils;
   f. Kentucky Board of Education;
   g. Kentucky affiliation of a national specialty program association;
   h. Prichard Committee for Academic Excellence;
   i. Partnership for Kentucky Schools; and
   j. Subject area specialists in the Kentucky Department of Education.
(2) An appointment shall be for a period of four (4) years. A member may serve an additional term if renominated and reappointed in the manner prescribed for membership. A vacancy shall be filled by the EPSB as it occurs.
(3) A member of the Board of Examiners and a staff member of the EPSB responsible for educator preparation and approval of an educator preparation program shall be trained by NCATE or trained in an NCATE-approved state program.
(4) The EPSB shall select and appoint for each scheduled on-site accreditation a team of examiners giving consideration to the number and type of programs offered by the institution. Team appointments shall be made at the beginning of the academic year for each scheduled evaluation visit. A replacement shall be made as needed.
(5) For an institution seeking NCATE accreditation, the EPSB and NCATE shall arrange for the joint Board of Examiners to be cochaired by an NCATE appointed team member and a state team chair appointed by the EPSB [A state team chair shall be appointed by the EPSB for a decision on state accreditation and program approval and state report approval]. The joint Board of Examiners shall be composed of a majority of NCATE appointees in the following proportions, respectively: NCATE and state - six (6) and five (5), five (5) and four (4), four (4) and three (3), three (3) and two (2). The size of the Board of Examiners shall depend upon the size of the institution and the number of programs to be evaluated.
(6) For an institution seeking state-only accreditation, the EPSB shall appoint a chair from a pool of trained Board of Examiners members.
(7) For state-only accreditation, the Board of Examiners shall have six (6) members.
(8) The EPSB shall make arrangements for the release time of a Board of Examiner member from his place of employment for an accreditation visit.

Section 13. Assembly of Records and Files for the Evaluation Team. For convenient access, the institution shall assemble, or make available, records and files of written materials which supplement the institutional report and which may serve as further documentation. The records and files shall include:

(1) The faculty handbook;
(2) Agenda, list of participants, and products of a meeting, workshop, or training session related to a curriculum and governance program impacting professional education;
(3) Faculty vitae [vita] or resumes;
(4) A random sample of graduates' transcripts;
(5) Conceptual framework documents;
(6) A curriculum program, rejoinder, or specialty group response that was submitted as a part of the program review process;
(7) Course syllabi;
(8) Policies, criteria and student records related to admission and retention;
(9) Samples of students' portfolios and other performance assessments;
(10) Record of performance assessments of candidate progress and summary of results including a program change based on continuous assessment;
(11) Student evaluations, including student teaching and internship performance; and
(12) Data on performance of graduates, including results of state licensing examinations and job placement rates.

Section 14. Previsit to the Institution. No later than one (1) month prior to the scheduled on-site evaluation visit, the EPSB shall conduct a previsit to the institution to make a final review of the arrangements. For an [a] NCATE-accredited institution, the previsit shall be coordinated with the NCATE [previsit].

Section 15. On-site Accreditation [Evaluation] Visit. (1) At least one (1) staff member of the EPSB shall be assigned as support staff and liaison during the accreditation [evaluation] visit.
(2) The EPSB shall reimburse a state team member for travel, lodging, and meals in accordance with 200 KAR 2:006. A team member representing NCATE shall be reimbursed by the educator preparation institution.
(3) The evaluation team shall conduct an on-site evaluation of the self-study materials prepared by the institution and seek out additional information, as needed, to make a determination as to whether the standards were met for the accreditation of the institution's educator preparation unit and for the approval of an individual educator preparation program. The evaluation team shall make use of the analyses prepared through the preliminary review process.
(4) An off-campus site which offers a self-standing program shall require a team review. If additional team time is required for visiting an off-campus site, the team chair, the institution, and the EPSB shall negotiate special arrangements.
(5) In a joint team, all Board of Examiners members shall vote on whether the educator preparation institution has met the six (6) NCATE standards. A determination about each standard shall be limited to the following options:
(a) Met,
(b) Met, with one (1) or more defined areas for improvement; or
(c) Not met.
(b) The Board of Examiners shall define the areas for improvement in its report.
(7) The processes established in subsections (5) and (6) of this section shall be the same for first and continuing accreditation.
(8) The on-site evaluation process shall end with a brief oral report:
(a) By the NCATE team chair and state team chair for a joint state/NCATE visit; or
(b) By the state team chair for a state-only visit.

Section 16. Preparation and Distribution of the Evaluation Report. (1) For a state-only visit, the evaluation report shall be prepared and distributed as follows:
(a) The EPSB staff shall collect the written evaluation pages from each Board of Examiners member before leaving the institution
(b) The first draft shall be typed and distributed to Board of
Examiners members.

(c) A revision shall be consolidated by the Board of Examiners
chair who shall send the next draft to the unit head to review for
factual accuracy.

d) The unit head shall submit written notification to the EPSB
containing receipt of the draft.

(e) The unit head shall submit to the Board of Examiners chair
within five (5) working days either:

1. A written correction to the factual information contained in
the report; or

2. Written notification that the unit head has reviewed the draft
and found no factual errors.

(f) The Board of Examiners chair shall submit the final report to
the EPSB and a copy to each member of the Board of Examiners.

(g) The final report shall be printed by the EPSB and sent to
the institution and to the Board of Examiners members within thirty
(30) working days of the conclusion of the on-site visit.

(2) For a joint state/NCATE visit, the evaluation report shall be
prepared and distributed as follows:

(a) The NCATE chair shall be responsible for the preparation,
editing and corrections to the NCATE report.

(b) The state chair shall be responsible for the preparation,
editing and corrections of the state report in the same manner
established in subsection (1) of this section for a state-only visit.

(c) The EPSB Board of Examiners report for state/NCATE
continuing accreditation visits shall be prepared in accordance with
the Board of Examiners Report Format for State/NCATE Accredi-
tation Visits.

(1) (a) The institution shall acknowledge receipt of the evaluation
report within thirty (30) working days of receipt of the report.

(b) If desired, the institution shall submit within thirty (30)
working days of receipt of the report a written rejoinder to the re-
port which may be supplemented by materials pertinent to a con-
clusion found in the evaluation report.

(c) The rejoinder and the Board of Examiners report shall be
the primary documents reviewed by the Accreditation Audit
Committee and EPSB.

(d) An unmet standard or area of improvement statement cited
by the team may be recommended for change or removal by the
Accreditation Audit Committee or by the EPSB because of evi-
dence presented in the rejoinder. The Accreditation Audit
Committee or the EPSB shall not be bound by the Board of Examiners
decision and may reach a conclusion different from the Board
of Examiners or NCATE.

(2) A follow-up report is prescribed through accreditation with
conditions, the institution shall follow the instructions that are pro-
vided with the follow-up report.

(3) If the institution chooses to appeal a part of the evaluation
results, the procedures established in Section 22 of this administra-
tive regulation shall be followed.

(4) The institution shall make an annual report relating to the
unit for educator preparation and relating to the programs of prepa-
rations as required by Section 5 of this administrative regulation.

Section 18. Accreditation Audit Committee. (1) The Accredita-
tion Audit Committee shall be a committee of the EPSB, and shall
report to the full EPSB [reporting to the Program and Technical
Assistance Work Group of the board]. The EPSB shall appoint the
Accreditation Audit Committee as follows:

(a) One (1) lay member;

(b) Two (2) classroom teachers, appointed from nominees
provided by the Kentucky Education Authorization;

(c) Two (2) teacher education representatives, one (1) from a
state-supported institution and one (1) from an independent edu-
cator preparation institution, appointed from nominees provided by
the Kentucky Association of Colleges for Teacher Education; and

(d) Two (2) school administrators appointed from nominees
provided by the Kentucky Association of School Administrators.

(2) The chairperson of the EPSB shall designate a member of
the Accreditation Audit Committee to serve as its chairperson [and
to report to the Program and Technical Assistance Work Group].

(3) An appointment shall be for a period of four (4) years ex-
cept that three (3) of the initial appointments shall be for a two (2)
year term. A member may serve an additional term if renominated
and reappointed in the manner established for membership. A
vacancy shall be filled as it occurs in a manner consistent with the
provisions for initial appointments.

(4) A member of the Accreditation Audit Committee shall be
trained by NCATE or in [by-an] NCATE-approved training [trainer].

(5) Following an on-site accreditation visit, the Accreditation
Audit Committee shall review the reports and materials constituting
an institutional self-study, the report of the evaluation team, and
the institutional response to the evaluation report. The committee
shall then prepare a recommendation for consideration by the
EPSB [Program and Technical Assistance Work Group].

(a) The committee shall review procedures of the Board of
Examiners to determine whether approved accreditation guidelines
were followed.

(b) For each institution, the committee shall make a recom-
mandation with respect to the accreditation of the institutional unit
for educator preparation as well as for approval of the individual
programs of preparation.

(c) For first accreditation, one (1) of four (4) [three-(3)] recom-
mandations shall be made:

1. Accreditation;

2. Provisional accreditation; [or]

3. Denial of accreditation; or

4. Revocation of accreditation.

(d) For regular continuing accreditation, one (1) of four (4)
[three-(3)] recommendations shall be made:

1. [Continuing] Accreditation;

2. Accreditation with conditions; [or]

3 Accreditation with probation; or

4. Revocation of accreditation.

(6) For both first and continuing accreditation, the Accreditation
Audit Committee shall review each program report including a
report from the Reading Committee, Board of Examiners team, and
institutional response and shall make one (1) of three (3) recom-
mandations for each individual preparation program to the EPSB
[Program and Technical Assistance Work Group].

(a) Approval;

(b) Approval with conditions; or

(c) Denial of approval.

(7) The Accreditation Audit Committee shall compile accredita-
tion data and information for each Kentucky institution that pre-
pared school personnel. It shall prepare for the EPSB reports and
recommendations regarding accreditation standards and proce-
dures as needed to improve the accreditation process and the
preparation of school personnel.

Section 19. Official State Accreditation Action by the Education
Professional Standards Board. (1) A recommendation from the
Accreditation Audit Committee shall be presented to the full EPSB
[Program and Technical Assistance Work Group which shall make a
recommendation to the full board].

(2) The EPSB shall consider the findings and recommenda-
tions of the Accreditation Audit Committee [Program and Technical
Assistance Work Group] and make a final determination regarding
the state accreditation of the educator preparation unit.

(3) Decision options following a first accreditation visit shall
include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets
each of the six (6) NCATE standards for unit accreditation. Areas
for improvement may be cited, indicating problems warranting the
institution's attention. In its subsequent annual reports, the profes-
sional education unit shall be expected to describe progress made
in addressing the areas for improvement cited in the EPSB's action
report.

2. The next on-site visit shall be scheduled five (5) years fol-
lowing the semester of the visit.

(b) Provisional accreditation.

1. This accreditation decision indicates that the unit has not
met one (1) or more of the NCATE standards. The unit has accred-
ted status but shall satisfy provisions by meeting each previously-
unmet standard. EPSB shall require submission of documentation

- 34 -
that addresses the unmet standard or standards within six (6) months of the accreditation decision, or shall schedule a visit focused on the unmet standard or standards within two (2) years of the semester that the provisional accreditation decision was granted.

If the EPUB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years. Following the focused visit, the EPUB shall decide to:

(a) Accreditation;

2. If the institution is accredited, the next on-site visit shall be scheduled for five (5) years following the semester of the first accreditation visit.

(c) Denial of accreditation. This accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems [has severe or numerous deficiencies] that limit its capacity to offer quality programs that adequately prepare candidates.

(d) Revocation of accreditation. This accreditation decision indicates that the unit has not sufficiently addressed the unmet standard or standards following a focused visit.

(4) Decision options following a continuing accreditation visit shall include:

(a) Accreditation.

1. This accreditation decision indicates that the unit meets each of the six (6) NCATE standards for unit accreditation. Areas for improvement may be cited, indicating problems warranting the institution's attention. In its subsequent annual reports, the professional education unit shall be expected to describe progress made in addressing the areas for improvement cited in EPUB's action report.

2. The next on-site visit shall be scheduled for seven (7) five (5) years following the semester of the visit.

(b) Accreditation with conditions.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards. If the EPUB renders this decision, the unit shall maintain its accredited status, but shall satisfy conditions by meeting previously unmet standards. EPUB shall require submission of documentation that addresses the unmet standard or standards within two (2) years of the semester that the accreditation with conditions decision was granted. If the EPUB decides to require submission of documentation, the institution may choose to waive that option in favor of the focused visit within two (2) years.

2. Following the focused visit, the EPUB shall decide to:

(a) Continue accreditation; or

(b) Revocation accreditation.

3. If the EPUB renders the decision to continue accreditation, the next on-site visit shall be scheduled for five (5) years following the semester in which the continuing accreditation visit occurred.

4. If the EPUB decides to require submission of documentation, the institution shall schedule a comprehensive on-site visit with the EPUB within two (2) years of the semester that the accreditation with probation decision was rendered.

(c) Accreditation with probation.

1. This accreditation decision indicates that the unit has not met one (1) or more of the NCATE standards and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates [serious or significant areas for improvement related to the NCATE standards]. As a result of the continuing accreditation review, the EPUB has determined that areas for improvement with respect to standards may place an institution's accreditation in jeopardy if left uncorrected. The institution shall schedule an on-site visit within two (2) years of the semester in which the probationary decision was rendered. This visit shall serve the process for first accreditation. The unit as part of this visit shall address all NCATE standards in effect at the time of the probationary review at the two (2) year point. Following the on-site review, the EPUB shall decide to:

(a) Continue accreditation; or

(b) Revocation accreditation.

2. If accreditation is continued, the next on-site visit shall be scheduled for five (5) years after the semester of the probationary visit.

(d) Revocation of accreditation. Following a comprehensive on-site visit that occurs as a result of an EPUB decision to accredit with probation or to accredit with conditions, this accreditation decision indicates that the unit does not meet one (1) or more of the NCATE standards, and has pervasive problems that limit its capacity to offer quality programs that adequately prepare candidates. Accreditation may [can] also be revoked if the unit:

1. No longer meets preconditions to accreditation, such as including but not limited to loss of state approval or regional accreditation;

2. Misrepresents its accreditation status to the public;

3. Falsely reports [reported] data or plagiarized information submitted for accreditation purposes; or

4. Fails to submit annual reports or other documents required for accreditation.

(5) Notification of EPUB action to revoke continuing accreditation or deny first [initial] accreditation, including failure to remove conditions, shall include notice that:

(a) The institution shall inform students currently admitted to a certification or rank program of the following:

1. A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial or revocation of state accreditation and who applies to the EPUB within the fifteen (15) months immediately following the denial or revocation of state accreditation shall receive the certificate or advancement in rank;

2. A student who does not meet the criteria established in subparagraph 1 of this paragraph shall transfer to a state accredited education preparation unit in order to receive the certificate or advancement in rank;

(b) An institution for which the EPUB has denied or revoked [revoked or denied] accreditation shall seek state accreditation through completion of the first accreditation process. The on-site accreditation visit shall be scheduled by the EPUB no earlier than two (2) years following the EPUB action to revoke or deny state accreditation.

Section 20. Program Approval Action Outside the First or Regular Continuing Accreditation Cycle. (1) Approval of a program shall be through the program established in Section 11 of this administrative regulation except that a new program not submitted during the regular accreditation cycle or a program substantially revised since submission during the accreditation process shall be submitted for approval by the EPUB prior to admission of a student to the program.

(2) For a new or substantially revised program, the EPUB shall consider a recommendation by staff, including review by the Continuous Assessment Review Committee, Content Program Review Committee, and the Reading Committee.

(3) A recommendation made pursuant to subsection (2) of this section shall be presented to [the Program and Technical Assistance Work Group which shall make a recommendation to] the full EPUB.

(4) Program approval, action options shall be:

(a) Approval, with the next review scheduled during the regular accreditation cycle unless a substantial revision is made;

(b) Approval with conditions, with a maximum of one (1) year probationary extension for correction of a specified problem to be documented through written materials or through an on-site visit at the end of the extension, the EPUB shall decide that the documentation supports:

1. Approval; or

2. Denial of approval; or

(c) Denial of approval, indicating that a serious problem exists which jeopardizes the quality of preparation of school personnel.

(5) The EPUB shall order review of a program if it has cause to believe that the quality of preparation is seriously jeopardized. The review shall be conducted under the criteria and procedures established in the EPUB "Emergency Review of Certification Programs Procedure [Procedure for Emergency Review of Certification Programs]" policy incorporated by reference. The on-site review shall be conducted by EPUB staff and a Board of Examiners team.
review shall result in a report to which the institution may respond. The review report and institutional response shall be used by the Accreditation Audit Committee as the basis for a recommendation to the Program and Technical Assistance Work Group and to the full EPSB board for:

(a) Approval;
(b) Approval with conditions; or
(c) Denial of approval for the program.

(5) If the EPSB denies approval of a program, the institution shall notify each student currently admitted to that program of the EPSB action. The notice shall include the following information:

(a) A student recommended for certification or advancement in rank within the twelve (12) months immediately following the denial of state approval and who applies to the EPSB within the fifteen (15) months immediately following the denial of state approval shall receive the certification or advancement in rank; and

(b) A student who does not meet the criteria established in paragraph (a) of this subsection shall transfer to a state approved program in order to receive the certificate or advancement in rank.

Section 21 Public Disclosure. (1) After a unit and program approval decision becomes final, the EPSB shall prepare official notice of the action. The disclosure notice shall include the essential information provided in the official letter to the institution, including the decision on accreditation, program approval, standards not met, program areas for improvement, and dates of official action.

(2) The public disclosure shall be entered into the minutes of the board for the meeting in which the official action was taken by the EPSB.

(3) Thirty (30) days after the institution has received official notification of EPSB action, the EPSB shall request a copy of the public disclosure notice to the Kentucky Education Association, the Council on Postsecondary Education, the Association of Independent Kentucky Colleges and Universities or other organizations (organizational) or individuals (individuals).

Section 22. Appeals Process. (1) If an institution seeks appeal of a decision, the institution shall appeal within thirty (30) days of receipt of the EPSB official notification. An institution shall appeal on the grounds that:

(a) A prescribed standard was disregarded;
(b) A state procedure was not followed, or
(c) Evidence of compliance in place at the time of the review and favorable to the institution was not considered.

(2) An ad hoc appeals board of no fewer than three (3) members shall be appointed by the EPSB chair from members of the Board of Education and members who have not had involvement with the team visit or a conflict of interest regarding the institution. The ad hoc appeals board shall act on the appeal to the EPSB.

(3) The consideration of the appeal shall be in accordance with KRS Chapter 13B.

Section 23 Approval of Alternative Route to Certification Programs. (1) Alternative route programs authorized under KRS 161.028(1)(e) of(1)(a), (b), or (d)(4) shall adhere to the educator preparation unit accreditation and program approval processes established in this administrative regulation and in the EPSB policy and procedure entitled "Approval of Alternative Route to Certification Program Offered Under KRS 161.028 [Policy-and-Procedure]" as a condition of offering an educator certification program or program leading to a rank change.

(2) The EPSB may waive any section, or part thereof, of this administrative regulation that the EPSB determines is unduly restrictive to the development and implementation of the alternative route program.

Section 24. In compliance with the Federal Title II Report Card State Guidelines established in 20 U.S.C. 1027 and 1028, the EPSB [Educator-Professional-Standards-Board] shall identify an educator preparation unit as:

(1) "At-risk of low performing" if an educator preparation program has received a:

(a) State accreditation rating of "provisional;
(b) State accreditation rating of "accreditation with conditions;"
or
(c) [(b) Quality Performance Index of "At Risk of Low Performing [Poor Performance]" established in Section 25 of this administrative regulation; or
(2) "Low performing" if an educator preparation program has received a:

(a) State accreditation rating of "accreditation with probation;"
or
(b) Quality Performance Index of "Low Performing [Very-Poor Performance]" established in Section 25 of this administrative regulation.

Section 25. The Education Professional Standards Board shall produce a state report card, which shall include:

(1) General information on the institution and the educator preparation unit;
(2) Contact information for the person responsible for the educator preparation unit;
(3) Type or types of accreditation the unit holds;
(4) Current state accreditation status of the educator preparation unit;
(5) Year of last state accreditation visit and year of next scheduled visit;
(6) Table of the unit's approved certification program or programs;
(7) Tables relating the unit's total enrollment disaggregated by ethnicity and gender for last three (3) years;
(8) Tables relating the unit's faculty disaggregated by FTE, ethnicity, and gender for last three (3) years;
(9) Table of the number of program completers (teachers and administrators) for the last three (3) years;
(10) Table relating pass rates on the required assessments, and
(11) Table relating pass rates for Kentucky Teacher Internship Program;
(12) Table relating pass rates for Kentucky Principal Internship Program (if applicable);
(13) Table indicating student teacher satisfaction with preparation program;
(14) Table relating teacher intern satisfaction with preparation program;
(15) Table relating new teacher (<3 years) and supervisor satisfaction with preparation program;
(16) Table aggregating quality performance indicators established in the section and the standards established in Section 2 of this administrative regulation;
(17) Hyperlinks to various supporting documents, and
(18) A Quality Performance Index (QPI) for each educator preparation unit. The Quality Performance Index shall comply with the provisions established in this subsection.

(a) The Quality Performance Index shall provide an indicator of the overall performance of the educator preparation unit.
(b) The Quality Performance Index shall be a calculation of three (3) separate performance measures:
(1) Annual summary PRAXIS II pass rate;
(2) Overall mean score on the Kentucky Educator Preparation Program new teacher survey; and
(3) Three (3) year average pass rate on the Kentucky Teacher Internship Program.

(c) 1. Performance points shall be assigned to the outcome of each of the three (3) performance measures and each multiplied by specific performance weights.
2. The sum of the product shall be divided by the sum of the performance weights.
3. The resulting quotient produces the Quality Performance Index.
(d) The Quality Performance Index shall be divided into four (4) five (5) performance categories:
1. A score of 4.00 to 2.50 [3-67] shall indicate "Excellent Performance [Performance];"
2. A score of 3.49 [3-66] to 3.00 shall indicate "Satisfactory Performance [Good Performance];"
3. A score of 2.99 [2-66] to 2.66 shall indicate "Fair Performance;"
4. A score of 2.65 [2-66] to 2.25 [2-00] shall indicate "At-Risk of
VOLUME 32, NUMBER 1 – JULY 1, 2005

Low Performance [Poor-Performance] and shall identify the educator preparation unit as "at-risk of low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation; and

e. [6] A score of less than 2.75 [2.00] shall indicate "Low Performing [Very-Poor-Performance] and shall identify the educator preparation unit as "low performing" in accordance with 20 U.S.C. 1027 and 1028 and Section 24 of this administrative regulation.

The performance points and performance weights are established in the "Quality Performance Index Calculation" document incorporated by reference.

Section 26. Approval of On-line Programs. Initial and continuing on-line educator preparation programs shall be regionally or nationally accredited and accredited or approved, as applicable, by the program’s state of origin.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Professional Standards for the Accreditation of Schools, Colleges, and Departments of Education", 2002 [2004] Edition, National Council for Accreditation of Teacher Education;


(c) "Board of Examiners Report Format for State/NCATE Accreditation [Validation]", 2001 Edition, National Council for Accreditation of Teacher Education;

(d) [and Education Professional Standards Board];

(e) "Accreditation of New Teacher Preparation Institutions Policy and Procedure", September 1989, Education Professional Standards Board;

(f) "Education Professional Standards Board Accreditation of Preparation Programs [Policy and Procedure]", August 2002 [November 1989] [Education Professional Standards Board].

(g) "Education Professional Standards Board Approval of Alternative Route to Certification Program Offered under KRS 161.028 [Policy and Procedure]", August 2002 [September 2000] [Education Professional Standards Board].

(h) "Education Professional Standards Board Emergency Review of Certification Programs Procedure [Procedure for Emergency Review of Certification Programs]", September 2003 [August 2002] [Education Professional Standards Board], and


(j) "Kentucky’s Safety Educator Standards for Preparation and Certification", May 2004 [Education Professional Standards Board];

(k) National Association of School Psychologists, Standards for School Psychology Training Programs, Field Placement Programs, Credentialing Standards, 2000; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005
CONTACT PERSON: Dr. Philip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 864-4606, fax (502) 864-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 14, 2005)

16 KAR 8:010. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.020, 161.028(1), 161.030(3), (4) STATUTORY AUTHORITY: KRS 161.028(1)(c), 161.030(3), (4) NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1)(c) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate. KRS 161.030(3) and (4) requires the Education Professional Standards Board to select the appropriate assessments required prior to teacher certification, determine the passing scores, establish reasonable fee for the assessments, and establish a procedure for a person to repeat a test and be informed of his strengths and weaknesses in each area. This administrative regulation establishes the written examination prerequisites for teacher certification, including the required tests, the minimum acceptable level of achievement on each test, the fee for each test, and the procedure for retaking the test.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to Kentucky teacher certification.

Section 2. The Education Professional Standards Board shall require the specialty tests and passing scores identified in this section for each new teacher applicant, and each teacher seeking an additional certificate, who completes application for certification on or after September 1, 2003.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board Interdisciplinary Early Childhood Specialty Test, with a passing score of 150.

(2) Until August 31, 2005, an applicant for elementary certification shall take Elementary Education: Curriculum, Instruction, and Assessment (0511) with a passing score of 163 or Elementary Education: Content Knowledge (0014) with a passing score of 148. Beginning September 1, 2005, the applicant shall take Elementary Education: Content Knowledge (0014) with a passing score of 148.

(3) An applicant for middle school certification shall take one (1) or two (2) middle school specialty tests based on the applicant’s area or areas of specialty with passing scores as identified in this subsection:

(a) Middle School Mathematics (0069) - 148 [143];
(b) Middle School Science (0439) - 139;
(c) Middle School English Language Arts (0049) - 162 [163]; or
(d) Middle School Social Studies (0089) - 152 [144].

(4) An applicant for certification for teacher of exceptional children in Communication Disorders, Learning and Behavior Disorders, Hearing Impaired, Hearing Impaired with Sign Proficiency, Visually Impaired, or Moderate and Severe Disabilities shall take each specialty test based on the applicant’s specialty with the corresponding passing score as identified in this subsection:

(a) Communication disorders:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157;
2. Speech Language Pathology (0330) - 600;
(b) Learning and behavior disorders:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Until August 31, 2006, Special Education: Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) - 172. Beginning September 1, 2006, Education of Exceptional Students: Mild to Moderate Disabilities (0542) - 172;
c. Moderate and severe disabilities:
1. Until August 31, 2006, Special Education. Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Special Education: Teaching Students with Mental Retardation (0231) - 146;
(d) Hearing impaired:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Education of Deaf and Hard of Hearing Students (0271) - 167;
(e) Hearing impaired with sign proficiency:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Education of Deaf and Hard of Hearing Students (0271) - 167; and
3. One (1) of the following tests with a passing score of "Intermediate Level":
   a. Sign Communication Proficiency Interview (SCPI); or  
(f) Visually impaired:
1. Until August 31, 2006, Special Education: Application of Core Principles Across Categories of Disabilities (0352) - 146 or Education of Exceptional Students: Core Content Knowledge (0353) - 157. Beginning September 1, 2006, Education of Exceptional Students: Core Content Knowledge (0353) - 157; and
2. Teaching Students with Visual Impairments (0280) - 700
[660]
(5) An applicant for certification at the secondary level shall take the specialty tests corresponding to the applicant's specialty with the passing scores identified in this subsection:
(a) Biology:
1. From January 24, 2005 through August 31, 2005:
   a. [L] General Science: Content Knowledge, Part 2 (0432) - 146; and
   b. [2.] Earth Science: Content Knowledge (0571) - 145; or
   c. [3.] Beginning September 1, 2005, Earth Science: Content Knowledge (0571) - 145.
(2) An applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing scores as identified in this subsection.
(a) Art:
1. Art Content Knowledge (0113) - 154 [154], and  
2. Art Making (0131) - 154;
(b) French:
1. French: Content Knowledge (0173) - 159; and  
(c) German: German: Content Knowledge (0181) - 157;
(d) Health: Health Education (0550) - 630;
(e) Latin: Latin (0600) - 700 [630];
(f) Integrated music:
1. Music: Content Knowledge (0113) - 154 [156]; and  
(g) Vocal music:
1. Music: Content Knowledge (0113) - 154 [156]; and  
(h) Instrumental music:
1. Music: Content Knowledge (0113) - 154 [156]; and  
(i) Physical education:
1. Physical Education: Content Knowledge (0091) - 147; and  
2. Physical Education: Movement Forms-Analysis and Design (0092) - 151;
(j) Spanish:
1. Spanish Content Knowledge (0181) - 160, [and  
2. Spanish: Productive Language Skills (0182) - 168]; or
(k) School Media Librarian: Library Media Specialist (0310) - 640; or
(7) An applicant for career and technical education certification to teach in grades 5-12 with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:
(a) Agriculture: Agriculture (0700) - 520;
(b) Business and Marketing Education - Business Education (0100) - 600 [640];
(c) Family and Consumer Sciences - Home Economics Education (0120) - 600 [670];
(d) Technology Education - Technology Education (0050) - 600; or  
(e) Industrial education. An applicant for industrial education with one (1) or more trade and industry specializations shall complete the assessments established in 16 KAR 6.020.
(8) An applicant for a restricted base certificate in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
(a) English as a Second Language: English to Speakers of Other Languages (0360) - 620;  
(b) Speech/Media Communications: Speech Communication (0220) - 580; or
(c) Theater: Theatre (0640) - 630.
(9) An applicant for an endorsement in the following specialty areas shall take the specialty test or tests with the passing scores identified in this subsection:
(a) English as a Second Language: English to Speakers of Other Languages (0360) - 620; or
(b) Learning and Behavior Disorders, grades 8-12: Until August 31, 2006, Teaching Students with Behavioral Disorders/Emotional Disturbances (0371) - 157. Beginning September 1, 2006, Education of Exceptional Students: Mild to Moderate Disabilities (0542) - 172.

Section 3. In addition to the specialty area tests established in Section 2 of this administrative regulation, the Education Professional Standards Board shall require the pedagogy tests and
VOLUME 32, NUMBER 1 – JULY 1, 2005

passing scores identified in this section for each new teacher applicant beginning September 1, 2003. If an individual is seeking additional certification in any area, the applicant need only take one (1) of the pedagogy tests identified in this administrative regulation.

(1) An applicant for elementary certification (grades P-5) shall take Principles of Learning and Teaching: Grades K-6 (0522) - 161.

(2) An applicant for middle school certification grades five (5) through nine (9) shall take Principles of Learning and Teaching: Grades 5-9 (0523) - 161.

(3) An applicant applying only for certification for teacher of exceptional children shall not be required to take a separate pedagogy test established in this section. The specialty area tests established in Section 2 of this administrative regulation shall fulfill the pedagogy test requirement for a teacher of exceptional children.

(4) An applicant for certification at the secondary level grades eight (8) through twelve (12) shall take Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

(5) An applicant for certification in all grades with a specialty area (e.g., art, music, etc.) shall take either:
   (a) Principles of Learning and Teaching: Grades K-6 (0522) - 161;
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) - 161; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

(6) An applicant for career and technical education certification in grades five (5) through twelve (12) shall take either:
   (a) Principles of Learning and Teaching: Grades 5-9 (0523) - 161; or
   (b) Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

(7) An applicant for a restricted base certificate shall take one (1) of the following pedagogy tests corresponding to the grade range of the specific restricted base certificate:
   (a) Principles of Learning and Teaching: Grades K-6 (0522) - 161;
   (b) Principles of Learning and Teaching: Grades 5-9 (0523) - 161; or
   (c) Principles of Learning and Teaching: Grades 7-12 (0524) - 161.

Section 4. Assessment Recency. (1) A passing score on a test established in this administrative regulation and completed on or after January 1, 2003 shall be valid for the purpose of applying for certification for five (5) years from the test administration date.

(2) A teacher who fails to complete application for certification to the Education Professional Standards Board within the applicable recency period of the test and with the passing score established in this administrative regulation shall retake the appropriate test or tests and achieve the appropriate passing score or scores required for certification at the time of application.

(3) The test administration date shall be established by the Educational Testing Service or other authorized test administrator.

Section 5. (1) An applicant for initial certification shall take the assessments on a date established by:
   (a) The Educational Testing Service;
   (b) The Education Professional Standards Board for special administration; or
   (c) The agency established by the Education Professional Standards Board as the authorized test administrator.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service, or other authorized test administrator, to the Kentucky Education Professional Standards Board and to the appropriate teacher preparation institution where the applicant received the relevant training.

(3)(a) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration.

(b) An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate ex-

amination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Education Professional Standards Board and processed in the normal certification cycle.

Section 6. An applicant shall pay the appropriate examination fee established by the Educational Testing Service for each relevant test required to be taken.

Section 7. An applicant who fails to achieve at least the minimum score on any of the appropriate examinations may retake the test or tests during one (1) of the scheduled test administrations.

Section 8. The Education Professional Standards Board shall collect data and conduct analyses of the scores and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 4 p.m.
CONTACT PERSON: Dr. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080.

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended at ARRS, June 14, 2005)


RELATES TO: KRS 161.020, 161.027, 161.030
STATUTORY AUTHORITY: KRS [156-070], 161.027, 161.028
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel. KRS 161.027 requires the board to develop or select appropriate assessments for applicants seeking certification as principal, to establish minimum scores and reasonable fees for the assessments, and to develop an internship program for beginning principals. [161.020 requires a certificate of legal qualification for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant seeking certification as principal, and further requires that each applicant for certification as a school principal with less than two (2) years of appropriate experience complete a one (1)-year internship program developed by the Education Professional Standards Board.] This administrative regulation establishes the examination requirements for certification as principal required under KRS 161.027.

Section 1. (1) The certificate for school principal shall be valid for serving in the position of principal or assistant principal. A new applicant for certification as a school principal, including vocational school principal, shall successfully complete the prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete a one (1)-year internship program if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. An applicant for certification as principal shall complete the following tests and attain the minimum score specified for
Section 1. Definitions. (1) "Half-time basis" means teaching fifteen (15) hours per week.

(2) "Instructional day" means a day that:
(a) The teacher intern is performing regular teaching responsibilities in an instructional setting, or is completing professional development for compensation from the district or employing school;
(b) Does not include annual leave, sick leave, or other unauthorized or unauthorized leave time.

(3) "Resource Teacher Time Sheet" means a copy of the document of the same name that is contained on the Education Professional Standards Board (EPSB) Web site. tampus.net and in the publication, Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants.

(4) "Teacher Intern" means any new teacher or out-of-state teacher with less than two (2) years of successful teaching experience, preschool through grade twelve (12), who has obtained a provisional certificate and is seeking initial certification in Kentucky.

Section 2. Basis for Professional Judgment by the Beginning Teacher Committee. (1) A teacher intern and the beginning teacher committee shall follow the requirements established in this administrative regulation and in "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants".

(2) In arriving at its professional judgment, the beginning teacher committee shall take into consideration the progress of the teacher intern throughout the school year and, particularly, the level of performance that has been achieved near the end of the internship. The beginning teacher committee shall determine the progress and improvement of the teacher intern, pursuant to KRS 161.030, by:
(a) A systematic observation of classroom performance;
(b) An ongoing review of portfolio materials or pilot Project Teacher Work Samples that shall be developed by the teacher intern;
(c) A review of the teacher intern's response to the suggestions and recommendations made by the beginning teacher committee during its meetings with the teacher intern throughout the internship.
VOLUME 32, NUMBER 1 – JULY 1, 2005

(3) Throughout the internship, the teacher intern and the beginning teacher committee shall utilize the new teacher standards for Preparation and Certification established by the Education Professional Standards Board in 16 KAR 1:010.

Section 3. Beginning Teacher Committee Membership Appointment. (1) (a) School districts shall maintain a pool of resource teachers and principals who have successfully completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(b) The Kentucky Teacher Internship Program Committee training may be approved for up to twelve (12) hours of professional development credit toward the continuing education requirements for resource teachers pursuant to KRS 161.055 and Effective Instructional Leadership Act (EILA) credit for administrators pursuant to KRS 156.101.

(2) The employing school district shall recommend principals and resource teachers for appointments by the Education Professional Standards Board to beginning teacher committees.

(3) If the teacher intern is teaching at a nationally or regionally accredited nonpublic school without a principal, the accrediting organization's guidelines for designating the school head or school leader shall be used by the employing school in making the recommendation for appointment of the principal member. If no guidelines exist, the school shall provide a written rationale for the appointment to the Education Professional Standards Board for approval.

(4) Representatives of the teacher training institution shall consult the Education Professional Standards Board with respect to the school districts and the geographical area to be served by teacher educator members on beginning teacher committees. All teacher educators shall have completed the Kentucky Teacher Internship Program Committee training in order to assure eligibility for appointment to beginning teacher committees.

(5) The teacher training institution shall appoint a teacher educator no later than October 1 for the fall semester and February 15 for the spring semester. If the teacher intern is employed after the date required for appointment of the teacher educator, the teacher training institution shall appoint a teacher educator no later than ten (10) days after being notified by the district of the need for a teacher educator.

(6) If the superintendent or designated nonpublic school or head [head- or head-] leader determines that a teacher educator is unsuitable for appointment, the superintendent or designated nonpublic school head or shall submit a written request for removal to the Education Professional Standards Board. The request shall contain the following:

(a) The facts and circumstances that form the basis for removal for cause; and

(b) The name of a qualified replacement submitted after consultation with the district or employing school Kentucky Teacher Internship Program Coordinator.

(7) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.

Section 4. Requirements for Time in the Internship and Classroom Assignment. (1) The one (1) year internship shall be completed during one (1) of the following:

(a) No less than 140 instructional days of employment in a certified position for which the teacher intern receives compensation during one (1) school year;

(b) Two (2) semesters totaling at least 140 instructional days of employment in a certified position for which the teacher intern receives compensation in two (2) consecutive school years.

(2) The internship shall be established for each teacher intern whose initial employment begins at any time during the school term except if the date of employment does not allow for completion of at least seventy (70) instructional days of employment during the school year. If the period of employment is less than seventy (70) instructional days in a school year, the local school district shall declare an emergency as provided in KRS 161.100, authorizing the superintendent to request an emergency teaching certificate. The employing school district shall be responsible for providing assistance and supervision to the new teacher during the period of employment under an emergency certificate.

(3) (a) The school district shall complete the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable. The Confirmation of Employment shall be completed [as electronic equivalent] for each teacher intern and submitted [submit-4] to the Education Professional Standards Board:

1. On or before October 15 for a teacher intern participating in the internship for the fall semester; or

2. On or before February 15 for a teacher intern participating in the internship for the spring semester.

(b) If the teacher intern begins employment after the dates established in paragraph (a) of this subsection, the school district or employing school shall submit the Confirmation of Employment in electronic form or in hard copy if the electronic submission system is unavailable [form or as electronic equivalent] within ten (10) days of the date of hire. A one (1) year internship certificate shall be issued in accordance with the provisions of 16 KAR 2:010 and 16 KAR 4:050.

(c) If the district fails to report verification of enrollment in the internship by the applicable date established in paragraph (a) or (b) of this subsection, and there is insufficient time remaining for the teacher intern to complete the number of days required under subsection (1) of this section, the district shall declare an emergency as provided in KRS 161.100, and the teacher intern shall enroll in the internship in the next semester of employment when at least seventy (70) instructional days are available.

(d) Failure to return the completed Confirmation of Employment or declare an emergency in accordance with paragraph (a) or (b) of this subsection shall result in:

1. Be [seemed] a violation of KRS 161.020; and

2. Result in the number of days the teacher intern taught without a valid certificate being included in the out of field report submitted to the Commissioner of the Department of Education in accordance with KRS 161.1221.

(4) A teacher intern may participate in the internship if the intern (he or she) is teaching on at least a half-time basis. A school district offering employment to a new teacher for part-time services which do not conform to the definition of half-time basis shall request a waiver from the Education Professional Standards Board staff for the new teacher to participate in the Kentucky Teacher Internship Program. The waiver request shall contain the following:

(a) The facts and circumstances that form the basis for the waiver;

(b) The name of a qualified replacement submitted after consultation with the district or employing school Kentucky Teacher Internship Program Coordinator.

(5) The Education Professional Standards Board shall send written notification to the teacher intern, the beginning teacher committee, the superintendent or designated nonpublic school head or leader, and the teacher training institution of its decision regarding the request for removal.

(6) The internship shall be established in a classroom which corresponds to the certificate of the teacher intern. An internship shall not be established in a classroom designated as an alternative school, classroom or program unless the district superintendent or designated nonpublic school head or leader submits a written request for a waiver to the staff of the Education Professional Standards Board. The request shall include the following:

(a) The type of students that attend the alternative school, classroom or program;

(b) The student selection and placement process;

(c) The level of support for students and faculty provided by the district,

(d) The degree of administrative support within the program, classroom or school;

(e) The location and facility that houses the program, classroom or school;
VOLUME 32, NUMBER 1 – JULY 1, 2005

(f) The instructional resources that are available to the faculty;
(g) The curriculum used by the program, classroom or school;
(h) The manner in which the program, classroom or school collaborates with other schools within the district;
(i) The current faculty and staff positions assigned to the program, classroom, or school.
(j) A brief description of how a teacher Intern placed in the alternative program, classroom or school could demonstrate that the teacher intern has met all of the new teacher standards;
(k) Contact information for an individual who could provide additional information about the request; and
(l) A signed affidavit by the superintendent, the superintendent's designee, or the designated nonpublic school head or leader confirming the information.

(7) The Education Professional Standards Board staff shall grant the waiver if there is a determination that the request and accompanying documentation sufficiently demonstrate that the level of support and services provided to the teacher intern assigned to an alternative school, classroom, or program is equivalent to that provided to a teacher intern placed in a nonalternative setting.

(8) If the waiver is granted, it shall remain in effect for the calendar year during which it is granted.

Section 5. Designation and Duties of Chair. [R] Responsibilities of Resource Teacher. [Responsibilities of] Teacher Intern. and Teacher Education Requirements for Taming and Content of Beginning Teacher Committee Meetings. (1) The principal member of the three (3) person beginning teacher committee shall serve as chair and shall be responsible for convening the committee and coordinating its efforts by scheduling observations and committee meetings. The chair shall be responsible for the timely submission of all documents and reports of the beginning teacher committee as required by this administrative regulation. All documents and reports shall be submitted through the electronic reporting system, or by hard copy if the electronic reporting system is unavailable. In addition, the chair shall:

(a)1. Make three (3) official [one (1)-hour] observation visits to the teacher intern's classroom with each observation lasting one (1) hour in duration or one (1) class period; or
2. Make two [Two] (2) one (1) hour or one (1) class period observation visits followed by an observation of [one (1)-of] the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons;
(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each observation;
(c) Report progress observed and concerns to the committee at the scheduled committee meetings;
(d) Monitor the time that the resource teacher spends with the teacher intern both in and out of class and sign the electronic version of the resource teacher time sheets or the hard copy of the resource teacher time sheets if the electronic reporting system is unavailable; and
(e) Ensure that all program policies and procedures are followed.

(2) The resource teacher shall be a mentor to the teacher intern and assess the teacher intern's progress in the internship.

(a) The resource teacher, upon completion of Kentucky Teacher Internship Program Committee Training and upon appointment, shall begin to assist [render assistance to] the teacher intern;

(b) The resource teacher shall spend a minimum of twenty (20) hours working with the teacher intern in the classroom setting.

1. As a portion of the twenty (20) hours, the resource teacher shall conduct:
   a. Three (3) official [one (1)-hour] observation with each observation lasting one (1) hour in duration or one (1) class period; or
   b. Two (2) [Two] (2) one (1) hour or one (1) class period observations lasting one (1) hour in duration or one (1) class period followed by an observation of [one (1)-of] the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons.

2. The observations shall be preceded by a lesson plan review and shall be concluded with a post-observation conference.

(c) Pursuant to the resource teacher requirements established in KRS 161.030(7), a resource teacher shall complete at least fifty (50) hours of out-of-class time identified in KRS 161.030 in consultation with the teacher intern to:
   1. Assist the teacher intern in the development of professional growth plan;
   2. Assist the teacher intern in areas identified in the professional growth plan;
   3. Assist the teacher intern with instructional activities such as planning, management techniques, assessment, and parent conferences;
   4. Arrange activities for the teacher intern such as attendance at seminars, conferences, or lectures offering educational assistance commensurate with the teacher intern's professional growth plan;
   5. Continually assess the teacher intern's progress in the internship in relation to each of the new teacher standards; and
   6. Enter and submit data into the online Resource Teacher Time Sheet or the hard copy of that document if the electronic reporting system is unavailable. This document is located within "Guiding and Assessing Teacher Effectiveness: A Resource Guide for Kentucky Teacher Internship Program Participants," incorporated by reference [intensity-performance records for all committee members]. The resource teacher may record a maximum of three (3) hours for this activity on the resource teacher time sheet.

(d) The resource teacher shall divide the consultation time required paragraph (c) of this subsection into appropriate increments that provide support for the teacher intern throughout the semester. The resource teacher shall not spend this required consultation time with the teacher intern at required in school or district-wide meetings, or any other activity for which the resource teacher receives compensation from [from] the district or employing school to include professional development activity.

(3) The teacher intern shall:

(a) Complete all requirements of the Kentucky Teacher Internship Program as established in KRS 161.030 and this administrative regulation, including compliance with the new teacher standards;
(b) Attend the orientation, preobservation and postobservation conferences with individual committee members, and all beginning teacher committee meetings;
(c) Participate with the resource teacher in the fifty (50) hours of consultation time to be spent outside of an instructional setting;
(d) Cooperate with the resource teacher in completing the twenty (20) hours of instructional observation; 
(e) Complete a professional growth plan (PGP);
(f) Prepare for three (3) official one (1) hour observations by each committee member during the year, including submitting a written lesson plan to the observer in a timely fashion prior to each visit. Each observation shall be one (1) hour in duration or one (1) class period; and
(g) Develop a portfolio or Project Teacher Work Sample for presentation and review at committee meetings.

(4) The teacher educator shall:

(a)1. Make three (3) official observations of the teacher intern with each observation lasting one (1) hour in duration or one (1) class period; or
2. Make two [Two] (2) observations of one (1) hour in duration or one (1) class period, followed by an observation of the teacher intern's one (1) hour or one (1) class period videotaped classroom lessons;
(b) Conduct a lesson plan review prior to each of the three (3) observations and a post-observation conference after each observation;
(c) Report progress observed and concerns to the committee at the scheduled committee meetings;

(5) Observations and committee meetings shall be scheduled in accordance with the following:
(a) The orientation meeting shall be held prior to the conduct of any formal classroom observations of the teacher intern;
(b) The second meeting shall be held between one (1) and sixty (60) instructional days following the orientation meeting and shall have been preceded by classroom observations by all committee members;
(c) The third meeting shall be held between sixty-one (61) and 110 instructional days following the orientation meeting and shall have been preceded by a second set of classroom observations by all committee members; and
(d) The fourth meeting shall be held between 111 and 140 instructional days following the orientation meeting and shall have been preceded by a third set of classroom observations by all committee members.

(6) (65) Committees formed during the spring semester shall establish a meeting schedule that observes the time sequences established in subsection (4) of this section for the full-year teacher intern but which shall span the spring and fall semesters of two (2) school years.

(7) (66)(a) Classroom observations conducted by committee members shall be:
1. Of at least one (1) hour or one (1) class period in duration; and
2. In the classroom or at the work station of the teacher intern.
(b) Additional classroom observations may be conducted at the option of the committee.
(c) All classroom observations shall be scheduled in advance in order to provide adequate time for preparation by the teacher intern.

(8) (77) All members of the committee shall attend all four (4) meetings of the committee.

(9) (68) At the orientation meetings of the beginning teacher committee, the following items shall be addressed:
(a) Expectations on the part of the teacher intern and each committee member;
(b) Procedures and materials for classroom observations;
(c) Use of classroom observation data in designing the teacher intern's professional growth plan;
(d) Requirements for the Intern portfolio or Pilot Project Teacher Work Sample;
(e) General schedule for the events to take place during the internship program; and
(f) Work of the resource teacher with the teacher intern.

(10) (69)(a) The primary purpose of the second and third committee meetings shall be to provide the teacher intern with information based on classroom observations, review of the portfolio or Pilot Project Teacher Work Sample, and reports of the resource teacher that will support the growth of the teacher intern.
(b) The committee shall provide the teacher intern at the second, third, and fourth meetings with a consensus assessment of the teacher intern's progress in the internship in relation to each of the new teacher standards.

(11) (646) The Professional Growth Plan (PGP) shall be initiated at the second committee meeting.

(12) (644) The third meeting shall include a review of expectations for the performance of the teacher intern, taking into account the reflections of the teacher intern and the committee members, and incorporating these expectations and reflections into the PGP.

(13) (643) The fourth meeting shall include a professional judgment by the committee members on the satisfactory completion of the one (1) year internship. This judgment shall be based upon the teacher intern's ability to meet the requirements of all new teacher standards.

Section 6. Decision by the Beginning Teacher Committee, Reporting, and Certification Actions. (1) The decision of the beginning teacher committee as to satisfactory completion of the internship for all full-year teacher interns shall be reported by the chair to the local school superintendent or other employer and to the Education Professional Standards Board by May 1 or no later than two (2) weeks following the final committee meeting, whichever occurs first. For midyear teacher interns completing the internship in December, the final report shall be submitted by December 15. The final report shall be accompanied by the resource teacher time sheets.

(2) If a teacher intern's performance is judged by the committee to be unsatisfactory, the teacher intern shall have the opportunity to repeat the internship during one (1) additional year contingent upon employment within the period of validity of the statement of eligibility for internship. If the teacher intern does not successfully complete the internship during the period of validity of the statement of eligibility, the teacher intern shall reapply for admission to the remaining one (1) year of internship by meeting the requirements in effect at the time of reaplication for certification.

(3)(a) If the teacher intern is unable to complete the internship within one (1) school year in accordance with the requirements of Section 5 of this administrative regulation, an interim report shall be submitted to the EPSB within ten (10) days of the date the internship ceases.

(b) Under extraordinary circumstances and with the approval of the EPSB (staff), the teacher intern may continue the internship [with employment for a semester] during a subsequent school year if employed in a public or nonpublic accredited school. Extraordinary circumstances shall include:
1. Serious medical conditions;
2. Temporary disability; or
3. Military deployment.

(c) The provisions of Section 4 of this administrative regulation shall not apply in this situation notwithstanding the provisions of Section 4 of this administrative regulation.

Section 7. Payments to Committee Members. (1) In accordance with [within the provisions of] the budgetary act, the Education Professional Standards Board shall contract with the local school district, or make other appropriate arrangements, for:
(a) The direct service of a resource teacher to each teacher intern;
(b) Participation in classroom observations and committee meetings; and
(c) The employment of substitute teachers to provide at least twenty (20) clock hours of released time for the resource teacher to observe and assist the teacher intern during normal working hours.

(2) A resource teacher shall:
(a) Not serve as a resource teacher for more than one (1) teacher intern concurrently; and
(b) Be paid a stipend in accordance with subsection (3) of this section.

(3)(a) Except as provided by paragraphs (b) and (c) of this subsection, the stipend shall be:
1. $1,400 for a year of service; and
2. $700 per day in accordance with KRS 161.030(6)(f) on a bimonthly basis corresponding to the semester in which the mentoring occurred or on an annual basis with payment being disbursed at the end of the one (1) year internship. The frequency of the disbursement shall be at the option of the district if the resource teacher is serving in a public school district. If the resource teacher is serving in a nonpublic school, the frequency of the disbursement shall be determined by the submission of the resource teacher time sheets.

(b) If the school or school district where the internship takes place fails to submit the time sheets by the date stipulated in Section 6(1) of this administrative regulation, the Education Professional Standards Board staff shall refuse payment of the stipend.

(c) The stipend shall be prorated if the required number of hours are not performed and documented in legitimate and appropriate pursuit of successful completion of the internship pursuant to the requirements of Section 5(2) of this administrative regulation.

Section 8. Participation in the Kentucky Teacher Internship [Two (2)-Year Pilot Project], Incentives, Duties of Mentor, Withdrawal. (1) As an alternative to participation in the one (1) year Kentucky Teacher Internship Pilot Project, a teacher intern may elect to participate in the one (1) year Kentucky Teacher Internship Pilot Project authorized by KRS 161.1222.

(2) Application for the pilot project shall be made by completing the KTIP Pilot Project Application Form or its online equivalent found on the Education Professional Standards Board website at www.kyepsb.net and submitting it to the Education Professional Standards Board. 
Standards Board. As a prerequisite to participation, the applicant shall have:
(a) A bona fide offer of employment,
(b) Approval for pilot project participation by the district superintendent or designated nonprofit school head or leader;
(c) Approval for pilot project participation by the principal or designated nonprofit school head or leader;
(d) A resource teacher assigned in accordance with the provisions of this administrative regulation and KRS 161.030 [An eligible mentor who will be assigned to the school at which the teacher intern will complete the internship];
(e) The Education Professional Standards Board shall select participants based on a representative sample, taking into consideration the following criteria:
   (a) Geographic location of the internship;
   (b) The teacher training institution from which the applicant graduated;
   (c) The grade level to be taught by the applicant;
   (d) The content area to be taught by the applicant;
   (e) The route by which the applicant sought certification, traditional or alternate.
(f) Incentives for two (2)-year pilot project participants shall include the following:
   (a) A stipend of $6,000 paid to the teacher intern by the Education Professional Standards Board. The stipend shall be paid upon successful completion of the first year of the two (2)-year pilot project;
   (b) Opportunities for the teacher intern to observe experienced teachers;
   (c) [9] An experienced resource teacher to serve as a mentor during the first year of the internship;
   (d) Online training modules for creating the Teacher Work Sample [demonstrated portfolio]; and
   (e) The development and use of the Teacher Work Sample in lieu of the traditional internship portfolio.

(5) [5] An individual serving as a resource teacher to a pilot project participant shall be paid in accordance with the provisions of Section 7 of this administrative regulation.

(6) [8] For an individual who has [individuals who have] completed service as a pilot project mentor between December 1, 2003 and the effective date of this administrative regulation, and received [under the prior version of the administrative regulation which provided-for a $1000 stipend, the mentor shall receive an additional $400. The In such cases, the] EPSBS shall forward the supplemental $400 to the mentor after the effective date of this administrative regulation.

(7) [8] For an individual who has [individuals who have] completed service as a pilot project mentor between December 1, 2003 and the effective date of this administrative regulation, and received [under the prior version of the administrative regulation which provided-for a $1000 stipend, the mentor shall receive an additional $500 if, at the time of appointment as a mentor to a pilot project intern, the teacher had attained certification by National Board for Professional Teaching Standards. The In such cases, the] EPSBS shall forward the supplemental $500 to the mentor after the effective date of this administrative regulation.

(e) Free Ivestext software;
(f) A one (1)-year delay in the Kentucky Teacher Internship Program evaluation; and
(g) A stipend of $4,000 paid to the mentor by the Education Professional Standards Board upon completion of the first year mentor duties. If the mentor fails to serve for the entire first year, the stipend shall be prorated accordingly and the mentor shall be entitled to a reduced payment based upon the percentage of the internship served.

(5) The mentor shall support and assist the teacher intern during the first year of the pilot project.

(b) [9] [10] (a) Prior to serving as a member of the beginning teacher intern committee [mentor on] the pilot project, the principal, resource teacher, and teacher educator each [mentors] shall have completed the Kentucky Teacher Internship Program training and the Teacher Work Sample Committee training.

(b) The mentor shall serve as a mentor to one (1) teacher intern per school year. This provision shall not preclude a teacher from serving as a mentor to a pilot project participant while serving as a resource teacher to a teacher intern enrolled in the Kentucky Teacher Internship Program.

(6) The mentor shall serve as a mentor at the school at which the teacher intern is employed. If a qualified mentor is not available at the school at which the teacher intern is employed, the district may request a waiver in writing providing detailed information as to the nonavailability of a mentor at the same school and a written justification as to how the mentor will provide all of the required assistance to the teacher intern.

[9] [10] During the second year of the internship pilot project internship the teacher intern and the beginning teacher committee shall utilize the Kentucky Teacher Internship Program Scoring Rubrics and Forms contained within the Teacher Work Sample Guide, incorporated by reference [Pilot Project Internship Performance Record].

(10) H.O.1 An Intern in the pilot project shall be required to prepare for and complete for the pilot project committee members three (3) official observations with each lasting one (1) hour or one (1) class period in duration. One (1) of the official observations shall be of a videotaped classroom lesson prepared by the Intern and lasting one (1) hour or one (1) class period in duration.

(11) [9] [10] To the extent that they do not conflict with this section, all other provisions of this administrative regulation shall apply to the internship pilot project.

(12) [9] [10] Participation in the Kentucky Teacher Internship Pilot Project shall not alter any rights ordinarily afforded to teacher interns or employing schools or school districts under the Kentucky Teacher Internship Program. The teacher intern may withdraw at any time and may enroll in the Kentucky Teacher Internship Program with approval of the superintendent or if a nonpublic school, the designated nonpublic school head or leader.

(g) A teacher intern may be removed from the pilot project by the Education Professional Standards Board for cause.

Section 9. Appeals. (1)(a) Appeals by teacher interns shall be reviewed by a committee of four (4) persons. The appeals committee shall include:

1. One (1) teacher;
2. One (1) principal;
3. One (1) teacher educator; and
4. The Executive Director of the Education Professional Standards Board, or his or her designee.

(b) The committee members shall be chosen from a pool of committee candidates appointed annually by the Education Professional Standards Board.

(c) Appeals committee member shall not take part in a decision in which the member has an interest or is biased.

(2)(a) The teacher intern shall file the appeal within thirty (30) calendar days of the date written notice of failure of the internship is received by the teacher intern.

(b) Upon receipt of the appeal, the Education Professional Standards Board shall send a copy to the members of the beginning teacher committee. Each member may file a written response within fifteen (15) days of receipt.

(3)(a) The appeals committee shall review the written appeal by the teacher intern, all beginning teacher committee reports, any additional documentation that accompanied the final report, and any written responses from the members of the beginning teacher committee.

(b) The appeals committee shall base its recommendation upon the following requirements:

1. Evidence of the teacher intern's ability to meet the requirements of the new teacher standards;
2. Appropriate documentation of at least twenty (20) hours in the instructional setting and fifty (50) hours outside normal working hours spent by the resource teacher in assisting the teacher intern;
3. Assignment of beginning teacher committee members in accordance with legal requirements;
4. Compliance with the requirements for the timing, content, reporting, and signing of teacher intern performance records, meeting and observation forms, and resource teacher time sheets; and
5. Agreement between teacher intern performance records,
professional growth plans, beginning teacher committee meeting reports, and the final decision of the committee.

(4) The appeals committee shall make a recommendation to the Education Professional Standards Board on the appeal within sixty (60) days following the receipt of the appeal, unless good cause exists for additional time. The Education Professional Standards Board shall issue a final decision in each appeal reviewed by the appeals committee. The Education Professional Standards Board may consider the appeals committee recommendation and the records reviewed by the appeals committee in issuing its decision.

(5) If the decision of the beginning teacher committee is not upheld, the Education Professional Standards Board shall issue the appropriate certificate to the teacher intern.

(6) If the decision of the beginning teacher committee is upheld, the Education Professional Standards Board shall issue another Statement of Eligibility for Internship, unless:

(a) The teacher intern has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program; or

(b) The period of validity of the statement of eligibility has expired.

(7) If, during the appeal process, it becomes evident that the beginning teacher committee has committed some procedural violation during the internship which makes it impossible to determine if the teacher intern has in fact been unsuccessful, the Education Professional Standards Board may notify the internship and allow the teacher intern to repeat the internship without penalty.

(8) If the teacher intern is not satisfied with the decision of the board based on the recommendation of the appeals committee, the teacher intern may request a formal hearing under the provisions of KRS Chapter 13B. The request shall be filed [1] in writing with the Executive Director of the Education Professional Standards Board within fifteen (15) calendar days of the date the board’s decision is received by the teacher intern.

(9) In notifying the teacher intern of the board’s decision, the Education Professional Standards Board shall send the decision of the board to the last known address of the teacher intern. If the teacher intern fails to notify the Education Professional Standards Board of an updated or correct address, or refuses to claim the certified mail when presented, the request for a hearing shall be filed in writing with the Executive Director of the Education Professional Standards Board within (20) calendar days of the date the board’s decision is mailed to the teacher intern by certified mail.

Section 10. A teacher intern who has not successfully completed the internship and has exhausted the two (2) year provision for participation in the Kentucky Teacher Internship Program shall not be eligible for a Kentucky teaching certificate under this administrative regulation.

Section 11. An intern serving the internship in Interdisciplinary Early Childhood Education (IECE) must successfully demonstrate the new teacher standards as adapted to the IECE standards and shall utilize the IECE Observation Instrument incorporated by reference.

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


(b) "Statement of Eligibility/Confirmation of Employment form, [1] revised November 2004 [reviewed June 2003] [2];

(c) "KTIP Pilot Report Application Form," June 2003 edition [2];

and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Testing, Research, and Internship Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LYDIA COFFEY, Chair
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.
CONTACT PERSON. Dr. Phillip Rogers, Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4608, fax (502) 564-7080.

TEACHERS’ RETIREMENT SYSTEM
(As Amended at ARR, June 14, 2005)

102 KAR 1:175. Investment policies.

RELATES TO: KRS 161.430
STATUTORY AUTHORITY: KRS 161.310, 161.430
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.430 requires the board of trustees to promulgate administrative regulations to establish investment policies and procedures to carry out their responsibilities. KRS 161.430 also provides that the board of trustees shall have full power and responsibility for the purchase, sale, exchange, transfer, or other disposition of the investments and money of the Teachers’ Retirement System. This administrative regulation establishes investment policies and procedures to carry out these responsibilities.

Section 1. (1) The board of trustees shall appoint an investment committee in accordance with the provisions of KRS 161.430(1). The trustees shall be named at the beginning of each fiscal year. The executive secretary shall act on behalf of the investment committee in administering the investment policies and procedures established in this administrative regulation. To ensure a sound portfolio, the executive secretary and the deputy executive secretary for investments may make a purchase or sale of an investment instrument without prior board approval if the action conforms to the provisions established in this administrative regulation.

(2) The board shall be provided a quarterly report reflecting a complete record of each investment transaction that occurred during that quarter.

(3) The following limitations shall apply to a staff employee who is delegated a transaction responsibility

(a) The investment committee shall be provided a complete record of each investment transaction or holding on a regular basis.

(b) The staff shall maintain a file of investment directives that indicates the committee’s separate review of each specific long-term investment.

(c) An “authorization for investment” shall be approved by the executive secretary or the deputy executive secretary for investments.

Section 2. Funds of the Teachers’ Retirement System shall be invested within a class or category of investment instruments in accordance with the limitations on an asset class established in subsection (4) of this section.

(1) The assets allocation parameters shall be structured to:

(a) Maximize return;

(b) Provide a prudent diversification of assets; and

(c) Preserve the capital of the Teachers’ Retirement System.

(2) The board shall:

(a) Assume a secure investment that provides long-term growth to the fund; and

(b) Not arbitrarily compromise security to enhance the prospects of a return.

(3) The Investment committee and the board shall be mindful of the fund’s liquidity and its capability of meeting a short- or long-term obligation.

(4) The following limitations shall apply to the asset classes in which funds are invested:

(a) There shall not be a limit on the amount of investments owned by the system that are guaranteed by the United States
government.
(b) The amount invested in corporate debt obligations shall not equal more than thirty-five (35) percent of the assets of the system at book value.

(c) The amount invested in common stocks or preferred stock shall not equal more than sixty (60) percent of the assets of the system at book values. The amount invested in a stock portfolio designed to replicate a given United States stock index shall not equal more than twenty-five (25) percent of the assets of the system at book value.

(d) The amount invested in real estate shall not equal more than ten (10) percent of the assets of the system at book value. Real estate shall include real estate equity, a real estate lease agreement, a mortgage on real estate that is not guaranteed by the United States government, and a share in a real estate investment trust.

(e) The amount invested in venture capital investments shall not equal more than one (1) percent of the assets of the system at book value. At least seventy-five (75) percent of the venture capital investments shall be in state.

(f) The amount invested in an additional category or categories of investments shall not equal more than ten (10) percent of the assets of the system at book value. The board shall approve by resolution an additional category or categories of investments.

Section 3. (1) The parameters that govern asset allocation shall reflect the overriding concerns by the board of trustees to:
(a) Preserve the capital assets of the fund;
(b) Provide opportunities for the fund to realize a rate of growth that will surpass the rate of inflation; and
(c) Meet the long-term financial obligations of the Teachers' Retirement System.

(2) An investment shall:
(a) Be identified as a fixed income or equity holding; and
(b) Comply with the guidelines for an investment established in subsections (3) and (4) of this section.

(3) The specific guidelines associated with a fixed income investment shall be as follows:
(a) A fixed income investment shall:
1. Be a direct obligation of:
   a. The United States government, a United States government agency, state government, or an entity that is organized under the laws of the United States, including a United States corporation that was established in the United States and has a substantial portion of the company owned by a foreign interest; or
   b. The Dominion of Canada, if the total of Canadian obligations does not exceed five (5) percent of the book value of the entire portfolio; and
2. Not be a foreign debt unless the debt is approved by the board of trustees as an additional category of investments.
(b) A fixed income investment shall be rated at the time of purchase within the four (4) [three-(3)] highest credit classifications identified by one (1) of the major rating services. A private placement debt investment shall be subject to the same credit qualifications as each fixed income investment. Notwithstanding the foregoing, the fixed income investment portfolio as a whole shall maintain an average rating equal to at least the second highest credit classification.
(c) An investment purchase shall not equal more than twenty-five (25) percent of a single publicly traded debt issue, unless the investment has a book value of less than $25,000,000. A private placement debt investment shall not exceed $20,000,000 in book value for each investment.
(d) Unless the issuer is the United States government or one (1) of its agencies, the amount invested in the securities of a single issuer shall not equal more than five (5) percent of the assets of the system at book value.
(e) 1. An investment in a mortgage shall be:
   a. A first mortgage on property located within the United States, or
   b. A mortgage guaranteed by the United States government.
2. A mortgage shall reflect its marketability and cash flow.
(f) The management of a fixed income investment shall be regarded as active.
1. If a security can be sold to the long-term benefit of the system, it shall be sold.
2. A bond may be swapped to take advantage of a yield spread between various qualities of bonds or the yield curve that differentiates bond returns by maturity.
3. A security may be sold at a loss if an alternative investment will add to the value of the fund and recoup the loss in a reasonable period of time.
4. The board of trustees and the investment committee shall make each investment for the general enrichment and security of the fund.

(4) The specific guidelines associated with an equity investment shall be as follows:
(a) The system shall not buy bullion, a stamp, rare coin, or other collectible.
(b) The system shall not:
1. Invest in a foreign currency without specific approval from the board of trustees. If the board of trustees approves the purchase of foreign equity, the system may settle a security transaction in a foreign city; and
2. Domicile a security or maintain a cash account in a foreign country.
(c) A stock investment shall be with a corporation that is created under the laws of the United States or that is a component of a major United States stock exchange index unless approved by the board as an additional category of investments. The system may acquire equity in a United States corporation that operates in a foreign country.
(d) Due to the greater risk associated with stock ownership, a stock investment shall be expected to yield a higher return on investment than the highest quality bond.
(e) The system's position in a single stock shall not exceed two (2) percent of the system's assets at book value. The system's position in a single stock shall not exceed five (5) percent of the outstanding stock for that company unless the investment is part of a venture capital program approved by the board of trustees or the investment committee.

(f) A real estate investment shall be judged on its total return potential. The system shall not acquire undeveloped land unless development plans are imminent.
(g) A real estate purchase that is conducted on a triple net lease basis shall involve a company that at the time of the initial agreement generates one (1) of the three (3) highest credit ratings with a national credit rating service.

(h) Except as provided in subparagraph 2 of this paragraph, the board of trustees and the investment committee shall avoid the incurrence of a loss.
2. The system may sell equity at a price below cost to the system if an alternative investment would provide a higher return and permit the loss to be recouped within a reasonable period of time.

Section 4. The Investment committee shall evaluate the performance and services of an Investment counselor. The committee through the board of trustees shall employ an investment counselor annually. The committee shall review the performance of a counselor recommendation and compare the performance to anticipated performance, efforts of other counselors, and appropriate market indices. The system may utilize the services of a consultant to evaluate a counselor or ascertain the combined effect of several investment counselors and the overall risk levels associated with the investment portfolio. A consultant shall evaluate the effectiveness of an investment manager in maintaining prescribed styles of investment. A periodic report shall be prepared to identify and document the efforts of an investment counselor. An annual report on the performance and service of each investment counselor shall be provided to the board with recommendations from the investment committee.

ARTHUR GREEN, Vice Chairperson, Acting Chair
APPROVED BY AGENCY: March 21, 2005
FILED WITH LRC: March 23, 2005 at 2 p.m.
CONTACT PERSON: Robert B. Barnes, General Counsel,
Teacher's Retirement System of the State of Kentucky, 473 Versailles Road, Frankfort Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, June 14, 2005)


RELATES TO: KRS Chapter 45A
STATUTORY AUTHORITY: KRS 45A.045(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.045(2) requires the Finance and Administration Cabinet to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates the Finance and Administration Cabinet Manual of Policies and Procedures.

Section 1. Incorporation by Reference. (1) "Finance and Administration Cabinet of Policies and Procedures (Revised June [April] 2005 [97/04])" is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, from the Finance and Administration Cabinet's Web site, or at the Finance and Administration Cabinet, Office of Policy and Audit, Division of Administrative Policy and Audit, Frankfort, Room 403, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained at the Finance and Administration Cabinet's Web site, www.finance.ky.gov.

R.B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 14, 2005 at noon
CONTACT PERSON: Kristen Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 303, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
(As Amended at ARRS, June 14, 2005)


RELATES TO: KRS 45A.095
STATUTORY AUTHORITY: KRS 45A.035, 45A.045, 45A.095
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.035 authorizes the Secretary of the Finance and Administration Cabinet to promulgate administrative regulations for the implementation of the Kentucky Model Procurement Code (KRS Chapter 45A). KRS 45A.095(1) requires the cabinet to promulgate administrative regulations concerning noncompetitive negotiations. This administrative regulation implements the provisions of KRS 45A.095.

Section 1. Contracts may be awarded on the basis of noncompetitive negotiations only for:
(1) Telephone, electrical energy, and other public utility services;
(2) Other services provided within a defined geographic area pursuant to a franchise awarded pursuant to law by a city, county, or other political subdivision authorized to award the franchise;
(3) Purchase or lease of a telephone system to serve the internal needs of state agencies or institutions;
(4) Commodities, equipment, or services available from a sole source, as determined by the purchasing officer in writing;
(5) Special supplies or equipment required for laboratory or experimental studies and necessary to a particular study, as determined by the purchasing officer in writing;
(6) Contracts or subscriptions for the purchase of published books, maps, periodicals, technical pamphlets, and except for those specially commissioned for use by an agency which shall be contracted for as provided by subsection (9) of this section, recordings, films, and works of art for museum or public display;
(7) Professional, technical, scientific, or artistic services, or agreements with multiple vendors of medical or health care and related services, and fixed rates of payment for those services as prescribed by state or federal law or administrative regulations, and entered into for the benefit of persons who are wards of the Commonwealth, or who are otherwise entitled pursuant to law to the provision of health care and related services by the Commonwealth;
(8) Commodities purchased from a wholesaler, manufacturer, or producer of the item for, and not requiring modification or alteration prior to resale to the general public through a resale outlet maintained by a state agency; except, the Department of Parks may also purchase edible food products for preparation and resale on-site;
(9) Professional, technical, scientific, or artistic services, or agreements with multiple vendors of medical or health care and related services, and fixed rates of payment for those services as prescribed by state or federal law or administrative regulations, and entered into for the benefit of persons who are wards of the Commonwealth, or who are otherwise entitled pursuant to law to the provision of health care and related services by the Commonwealth;
(10) Commodities, supplies, equipment, or construction services that would ordinarily be purchased on a competitive basis if an emergency has been declared in the manner prescribed by KRS 45A.095(2) and (3);
(11) Supplies, equipment or services from the Government of the United States, another state, or a political subdivision of the Commonwealth, or nonprofit organization organized under the laws of the Commonwealth, another state or the District of Columbia, or chartered under an Act of Congress, and lawfully doing business in the Commonwealth of Kentucky, and serving a public purpose of an essentially governmental, civic, educational, or charitable nature;
(12) Contracts with vendors who maintain a general service administration price agreement with the United States of America, if the contract between the Commonwealth and the vendor does not authorize a price higher than is contained in the contract between general service administration and the vendor;
(13) Purchase of real property or interests in real property;
(14) Purchase of fresh food and perishable items which cannot reasonably be acquired through competitive sealed bidding;
(15) Purchase of limited goods or services that cannot reasonably or practically be obtained through competitive sealed bidding as determined by the executive director [Dwiese] of the Office of Dwiese of Material and Procurement Services.

Section 2. Contracts for professional, technical, scientific, or artistic services under Section 1(9) of this administrative regulation shall be awarded as provided in KRS 45A.690 to 45A.725, except that contracts for architectural or engineering services shall be awarded in accordance with KRS 45A.800 to 45A.833.

R.B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 14, 2005
CONTACT PERSON: Kristen Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 303, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(As Amended at ARRS, June 14, 2005)

200 KAR 14:011. Qualified investments.

RELATES TO: KRS 42.500(9), 14(14), 42.520, 42.525
STATUTORY AUTHORITY: KRS 42.500(9), 42.520(2), 42.525
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(9) requires the State Investment Commission to promulgate administrative regulations for the Investment and reinvestment of state funds. KRS 42.520(2) requires the commission to promulgate administrative regulations concerning
the assignment of priorities to public depositaries. KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds and the acquisition, retention, management, and disposition of investments. (42.500, 42.520, and 42.525) provide that the State Investment Commission shall implement the state's investment program by administrative regulation. This administrative regulation establishes the standards that govern the commonwealth's investment and cash management programs.

Section 1. Definitions. (1) "Commission" means the State Investment Commission.
(2) "Floating rate" means the interest rate [that]:
(a) That is paid on the specific security changes periodically on a preestablished schedule;
(b) May be tied directly to an index plus some spread or margin;
(c) Includes hybrid adjustable rate mortgages if the first repricing date is less than six (6) years from the issuance date.
(3) "Hedge" means a position in a financial instrument taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments.
(4) "Interest rate swaps" means an agreement governed by an International Swap Dealers Association master contract between two (2) parties to exchange, or have the conditional right to exchange, specified cash flows.
(5) "Nationally-recognized rating agency" means Moody's Investors Service, Inc., and Standard & Poor's, or Moody's Fitch Ratings.
(6) "Office" means the Office of Financial Management.
(7) "Options" means a contract that provides the right, but not the obligation, to buy or sell a specific amount of a security within a predetermined time period and includes specific bonds or notes, an exchange traded futures contract, or the cash value of an index.
(8) "Pools" means the investment pools that are managed by the Office of Financial Management, under the guidance of the commission.

Section 2. The commission shall:
(1) Not invest state funds in an institution or instrument that it deems unsafe and a threat to the security of state funds;
(2) Maintain adequate liquidity to meet the cash needs of the state;
(3) Within the limits established by this administrative regulation, invest in securities that maximize yield or return to the commonwealth; or
(4) Not borrow money to enlarge the pool.

Section 3. Interest earned on the cash balances shall be calculated daily on an accrual basis.

Section 4. Investment Criteria. (1) The criteria to determine the amount of funds per investment instrument shall be the:
(a) Liquidity needs of the state in aggregate as budgeted;
(b) Rates available per instrument; and
(c) Safety of principal and interest.
(2) An investment instrument shall qualify if it is specified by:
(a) KRS 42.500;
(b) This administrative regulation;
(c) 200 KAR 14:08; or
(d) 200 KAR 14:09.

Section 5. Investment Securities. The commission shall invest only in the following security types:
(1) U.S. Treasury, agency, and government sponsored entity agency securities with a maturity of less than seven (7) years, or an embedded put of less than three (3) years.
(2) Mortgage pass-through securities issued by U.S. government agencies or by government sponsored entities, including, government national mortgage association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Small Business Administration, and Student Loan Marketing Association with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus. The commission may hold pass-throughs purchased under this subsection which have an average life of less than six (6) years, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.
(3) Real estate mortgage investment conduit obligations, as defined by the Internal Revenue Code, also known as collateralized mortgage obligations, or CMOs, rated A or higher by a nationally-recognized rating agency with an average life of less than four (4) years at the time of purchase, using Bloomberg consensus prepayment projections, if available, or other reasonable prepayment assumptions if there is no consensus.
(4) Asset-backed securities (ABS) rated in the highest category by a nationally-recognized rating agency with an average life of four (4) years or less.
(5) U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic issuers, rated A or higher by a nationally-recognized rating agency, with a maturity not longer than five (5) years, or an embedded put of less than three (3) years.
(6) U.S. dollar denominated sovereign debt rated A1 or higher by a nationally-recognized rating agency, with a maturity not to exceed five (5) years.
(7) Money market securities, including:
(a) Commercial paper and bank's or other comparable paper; and
(b) Certificates of deposit; and
(c) Eurodollars and time deposits rated in the highest short-term rating with assets in excess of one (1) billion dollars and bankers' acceptances rated A or higher. Maturities shall be limited to six (6) months for bankers' acceptances and nine (9) months for all other money market securities.
(8) Repurchase and reverse repurchase agreements collateralized at 102 percent (marked to market daily) with treasuries, agencies, and collateralized mortgage obligations that meet the requirements established by subsection (4) of this section, with a maximum maturity of one (1) year if executed with approved broker-dealers as provided by Section 8 of this administrative regulation and a maximum of three (3) years for the Kentucky Bank Repurchase Program participants.
(9) Municipal obligations rated A1 or higher by a nationally-recognized rating agency, with a maturity not to exceed five (5) years. The maturity restriction shall be waived for obligations issued by the Commonwealth of Kentucky or any entity within the Commonwealth of Kentucky.
(10) Mutual funds in which at least ninety (90) percent of the underlying holdings of the fund are in securities in which the pools could invest directly.
(11) Any floating rate securities which would otherwise qualify under this section except for maturity or average life restrictions.

Section 6. Limits on Investment Securities. (1) U.S. agency mortgage backed securities and collateralized mortgage obligations shall not exceed twenty-five (25) percent of total pool assets in aggregate.
(2) Asset-backed securities shall not exceed twenty (20) percent of total pool assets.
(3) U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic issuers shall not exceed twenty-five (25) percent of individual pool and $25,000,000 per issuer, inclusive of commercial paper, bankers' acceptances, and certificates of deposit.
(4) U.S. dollar denominated sovereign debt shall not exceed five (5) percent of any individual portfolio and $25,000,000 per issuer.

Section 7. Risk Management. The pools may utilize interest rate swaps, over-the-counter and exchange traded U.S. Treasury contracts and options to manage the portfolio's exposure to interest rate risk. These instruments shall only be used if the results are demonstratively superior to cash market transactions.
Section 8. Pools and Operating Procedures. (1)(a) Except for the Budget Reserve Trust Fund, state funds held in accounts the interest of which accrues to the General Fund shall be placed in the short-term pool or the intermediate pool.
(b) The short-term pool shall not purchase a security with a duration exceeding one (1) year.
(c) The duration of the short-term pool shall not exceed ninety (90) days.
(2)(a) Except as provided by paragraph (b) of this subsection, state funds held in agency or university accounts, the interest of which accrues to the agency or university, shall be placed in the intermediate pool.
(b) These funds may be placed in the short-term pool, if the commission determines that the liquidity needs of an agency require shorter term investment.
(c) The duration of the intermediate pool shall not exceed three (3) years.
(3)(a) Bond proceeds from state issued bonds shall be placed in the bond proceeds pool.
(b) The bond proceeds pool shall consist of U.S. Treasury, agency and government-sponsored entity notes, bills and bonds, and repurchase agreements.
(4)(a) The portion of the Budget Reserve Trust Fund, the disposition of which the approval of the General Assembly is required, and agency funds which the commission and agency determine need not be expended for a period of two (2) years, shall be placed in the long-term pool.
(b) The duration of the long-term pool shall not exceed four and one-half (4.5) years.

Section 9. Approved Broker-Dealers. (1) A broker-dealer who was approved by the commission prior to the effective date of this administrative regulation shall be considered an approved broker-dealer.
(2) Except as provided by subsection (1) of this section, a broker-dealer shall be approved by the commission if the broker-dealer has met the requirements established by subsection (3), (4), or (5) of this section, as applicable.
(3) An approved broker-dealer shall be a broker-dealer who:
(a) Is a primary dealer of the Federal Reserve rated A1-P1 by a nationally-recognized rating agency, or
(b) Maintains an office in Kentucky, and:
1. Has $25,000,000 in excess net capital; or
2. Whose trades are guaranteed by a primary dealer of the Federal Reserve who is rated A1-P1 or higher by Standard and Poor’s or Moody’s Investors Service; or
(c) Has a minimum of $100,000,000 in excess net capital.
(4) An approved broker-dealer for repurchase agreements shall:
(a) Be rated A1 or higher by a nationally-recognized rating agency;
(b) Have transaction amounts limited to his excess net capital, and
(c) Have executed the:
1. Public Securities Association Master Repurchase Agreement prior to entering into a repurchase transaction; and
2. Appropriate Custodial undertaking in Connection with Master Repurchase Agreement.
(5) An approved broker-dealer for hedge vehicles shall:
(a) Have at least $100,000,000 in excess net capital; and
(b) Be rated A1 or higher by a nationally-recognized rating agency;
(c) Have market value transactions limited to his excess net capital; and
(d) Have executed the:
1. International Swap Dealers’ Association Agreement prior to the implementation of a swap; and
2. Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities, prior to the implementation of an over-the-counter option transaction.
(6)(a) Within 180 days of the end of each broker-dealer’s fiscal year, a broker-dealer shall submit a copy of the broker-dealer’s audited financial statements for that fiscal year.
(b) A broker-dealer who wishes to be approved by the commission as an approved broker-dealer shall submit a copy of the broker-dealer’s current audited financial statements.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) “Commonwealth of Kentucky, Bond Proceeds Pool, Prospectus, (12/97)”;
(b) “Commonwealth of Kentucky, Short-term Pool, Prospectus, (12/97)”;
(c) “Commonwealth of Kentucky, Intermediate-term Pool, Prospectus, (12/97)”;
(d) “Commonwealth of Kentucky, Long-term Pool, Prospectus, (12/97)”;
(e) “Public Securities Association Master Repurchase Agreement (12/97)”;
(f) “Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of New York (12/97)”;
(g) “Custodial Undertaking in Connection with Master Repurchase Agreement, Chase Manhattan (12/97)”;
(h) “International Swap Dealers’ Association Agreement (12/97)”;
(i) “Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities (12/97)”.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at State Investment Commission, Suite 261, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC. April 14, 2005 at noon
CONTACT PERSON Kristen Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 385, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

FINANCE AND ADMINISTRATION CABINET
State Investment Commission
(As Amended at ARRS, June 14, 2005)

200 KAR 14:081. Repurchase agreement.

RELATES TO. KRS 41.610, 42.500(9)-(14), 42.520, 42.525
STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500(10) requires the State Investment Commission to promulgate administrative regulations for the investment and reinvestment of state funds, KRS 42.520(2) requires the commission to promulgate administrative regulations concerning the assignment of priorities to public depositories, KRS 42.525(1) requires the commission to promulgate administrative regulations for the investment and reinvestment of state funds, and the acquisition, retention, management, and disposition of investments [525 requires the State Investment Commission to prescribe standards for the operation of the state’s investment program]. This administrative regulation establishes the general standards which shall apply to the employment of repurchase agreements as investment vehicles with eligible financial institutions.

Section 1. Definitions. (1) "Commission" means the State Investment Commission.
(2) "Eligible financial institution" means:
(a) A commercial bank, or savings and loan association:
1. Chartered to do business in Kentucky by the Commonwealth of Kentucky, or by an agency of the United States government; and
2. That maintains an office in Kentucky; or
(b) A broker-dealer approved pursuant to the provisions of Section 8 of 200 KAR 14.011.
(3) "Office" means the Office of Financial Management [and Economic Analysis].
(4) "Repurchase agreement" or "reverse repurchase agree-
ment" means an actual, conditional purchase or sale of securities of the United States Treasury, an agency, instrumentality, or corporation of the United States, or another security authorized for investment pursuant to KRS 42.500(9), with an agreement to resell or repurchase the securities to their original owner on a specific date in the future.

Section 2. Minimum Interest Rates. Except as provided by KRS 41.610, the commission shall not invest public funds in a repurchase agreement with a yield less than could be received on a directly purchased United States Treasury security of comparable maturity.

Section 3. Reporting Requirements for Eligible Investment Institutions. The commission shall inform eligible financial institutions of the reporting requirements for the investment of state funds in eligible financial institutions established by this section.

(1) An eligible financial institution shall
(a) Submit a copy of its quarterly financial reports as furnished to Department of Financial Institutions, including accompanying schedules, to the commission within thirty (30) days from the end of each quarter; and
(b) Complete and sign the "Public Securities Association Master Repurchase Agreement, Incorporated by reference in 200 KAR 14:011".

(2) An approved broker-dealer shall:
(a) Submit a copy of its annual audited financial statements and copies of quarterly financial statements, as published, to the commission; and
(b) Complete and sign the "Public Securities Association Master Repurchase Agreement", Incorporated by reference in 200 KAR 14:011.

Section 4. Eligible Securities. Investment securities authorized for investment pursuant to KRS 42.500(9) shall be considered eligible securities for repurchase agreements.

Section 5. Sufficiency of Securities Purchased. (1) The securities purchased shall have a market value, including accrued interest, of not less than 102 percent of the face value of the repurchase agreement.

(2) The state's custodian [general depository] banking contract shall require the general depository to review the sufficiency of collateral on all repurchase agreements, except those subject to a trinity agreement. The review shall occur at least every seven (7) calendar days with periodic reviews made by the office.

(3) The commission shall demand additional securities to be delivered immediately, if market conditions cause the value of the securities purchased to drop below 102 percent of the face value of the repurchase agreement.

Section 6. Status of Parties. (1) The commission and the eligible financial institutions authorized to enter into repurchase agreements:
(a) Shall be considered principals in repurchase agreements; and
(b) Shall not be considered agents for third parties.

(2) Contractual obligations shall apply to and be binding on the commission and the specific eligible financial institution with which the repurchase agreement is initially negotiated and settled.

Section 7. Default. (1)(a) If an eligible financial institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall set off claims and liquidate property held in respect to the repurchase agreement against obligations owing to the eligible financial institution under other repurchase agreements.

(b) Payments, deliveries, and other transfers made under a repurchase agreement shall be deemed to have been made in consideration of payments, deliveries, and other transfers made under any other repurchase agreement by the eligible financial institution.

(c) The obligation to make payments, deliveries and other transfers under a repurchase agreement may be applied against the obligation to make payments, deliveries and other transfers under any other repurchase agreements of the eligible financial institution and netted.

(2)(a) From the proceeds of liquidated property, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation.
(b) Remaining cash balances shall be forwarded to the financial institution with which the repurchase agreement was originally executed.

Section 8. Kentucky Bank Repurchase Program. (1) Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky before being placed shall meet the following criteria [shall be placed pursuant to the following]:
(a) A loan to deposit ratio equal to or greater than seventy (70) percent
(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent
(c) A capital to assets ratio equal to or greater than seven (7) percent,
and
(d) A return on assets ratio greater than zero.

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with offices located in Kentucky shall be limited to $5,000,000 per institution.

(3) The office shall review the financial ratios listed quarterly to determine eligibility of institutions. Existing repurchase agreements with institutions which fail to meet the minimum criteria for two (2) consecutive quarters shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:
(a) Availability of funds,
(b) Demand for funds by the institutions; and
(c) Highest loan to deposit ratio of eligible institutions.

(4)(a) A repurchase agreement with a commercial bank or savings and loan shall not be an amount in excess of its capital structure or ten (10) percent of the institution's deposits, whichever is less.

(b) The commission shall not enter into a Kentucky Bank Repurchase Program repurchase agreement with a commercial bank or savings and loan association that will cause that institution to exceed in aggregate a total of $25,000,000 in repurchase agreements.

(5) Yield charged and collateral requirements for commercial banks and savings and loans:
(a) A commercial bank or savings and loan submitting U.S. Treasuries and agencies excluding mortgage backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as quoted by Bloomberg Financial Markets with 102 percent collateral.
(b) A commercial bank or savings and loan submitting mortgage-backed securities and collateralized mortgage obligations shall be charged the same duration yield generic repurchase rate as posted on Bloomberg Financial Markets, plus fifty (50) basis points with 105 percent collateral.

(6) Payment for and safekeeping of purchases.
(a) Each transaction shall be conducted on a payment-versus-delivery basis.
(b) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.

(c) Securities purchased from commercial banks or savings and loan associations in a repurchase agreement shall be received, verified, and safe-kept by the state's custodian [general depository] bank or its agent.

R.B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 14, 2005 at noon
CONTACT PERSON: Kristen Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 333, Capital Annex, Frankfort, Kentucky 40601, phone (502) 564-
FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(As Amended at ARRS, June 14, 2005)

200 KAR 38:050. Advancements to sheriffs.

RELATES TO: KRS 64.140
STATUTORY AUTHORITY: KRS 42.020(3) [64.440(4)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.020(3) requires the state controller to be responsible for all aspects of accounting policies and procedures, financial accounting systems, and Internal accounting control policies and procedures. KRS 64.140 provides for advancements to county sheriffs to defray official expenses. This administrative regulation provides for advancement to sheriffs of counties with a population of less than 70,000.

Section 1. Definitions. (1) "Branch" means the County Fee Systems Branch.
(2) "Cabinet" means the Finance and Administration Cabinet.
(3) "Secretary" means the secretary of the Finance and Administration Cabinet.

Section 2. Application. Sheriffs of counties containing a population of less than 70,000 may make application to the State Treasurer to be advanced monies to operate their offices during those periods of the year when the fees of the office are inadequate to provide for operational expenses. Application shall be in the form of a letter addressed to the Finance and Administration Cabinet, Office of the Controller, Division of Local Government Services, County Fee Systems Branch, signed by the sheriff, and notarized by a notary public in and for the Commonwealth of Kentucky. The application shall state:
(1) The fees received by the sheriff are insufficient to provide the necessary funds for the operation of the office;
(2) The sheriff desires to receive an advancement of funds from the State Treasury to defray office expenses;
(3) The sheriff agrees to comply with this administrative regulation; and
(4) The documents filed with the application are true and correct statements of fact.

Section 3. Accompanying Documents. The following documents shall accompany a letter of application:
(1) A copy of the sheriff's settlement with the fiscal court of the sheriff's county for the year immediately preceding the year in which application for an advancement is made, certified as true and correct by the county court clerk. If the sheriff's settlement with the fiscal court has not been filed, the sheriff may substitute an affidavit setting out the actual fees of the office for the immediate preceding year.
(2) A copy of the last quietus from the state, certified by an authorized representative of the Finance and Administration Cabinet, Department of Revenue.
(3) A detailed budget for the sheriff's office, approved by fiscal court, for the year in which the advancement is to be made. The budget statement shall contain detailed breakdowns of monthly expenditures and receipts.
(4) A detailed statement, approved by fiscal court, of the amount to be advanced in each month.
(5) An affidavit setting out receipts for the year up to and including the last day of the previous month and actual expenses to the last day of the month in which application is made, if the sheriff first requests an advance in a month other than January.
(6) A bond in favor of the commonwealth for an amount not to exceed the total advance requested for the year. The bond shall be:
(a) Issued by a surety company authorized to do business in the Commonwealth of Kentucky;
(b) Conditioned upon the full repayment by the sheriff of all monies advanced by the commonwealth;
(c) In addition to any other bonds required by statute;
(d) Approved by the fiscal court; and
(e) Prepared in duplicate, with the original to be filed with the branch and a copy with the county court clerk of the sheriff's county.

(7) Any other document, report, or information which:
(a) Describes or facilitates understanding of the fiscal condition, history, or management of the sheriff's office; and
(b) Is requested by the cabinet to enable it to adequately evaluate the advisability of making advancement [deemed necessary by the cabinet to enable it to adequately evaluate the advisability of making advancement].

Section 4. Initial Advancement; Procedure. Upon receipt of an application for advancement to a sheriff, the branch manager shall examine the application for compliance with this administrative regulation. If the request and supporting documents are found to be in proper order, the branch manager shall recommend to the secretary that an advance be made and a suggested amount. The branch manager shall be guided by the following considerations in making a recommendation:
(1) If the first advance is requested for the month of January, the branch manager shall recommend that the cabinet issue a warrant for the lesser of:
(a) The sheriff's request; or
(b) The estimated expenditures minus receipts for the month of January as set out in the sheriff's budget; except that the monthly advance shall not exceed the lesser of $50,000 or one-twelfth (1/12) of the sheriff's receipts for the previous year.
(2) If the first advance request is for a month other than January, the branch manager shall add the expenses of the sheriff for the months of the year preceding the application as set out in the affidavit to the estimated expenses for the month in which the advance is requested, subtract the receipts of the office, and recommend that a warrant be issued for the lesser of:
(a) The figure representing the difference between the sum of the actual expenses and the estimated expenses for the month of the advance and the receipts of the office, or
(b) The amount requested; except that the recommendation shall not exceed $50,000 or one-twelfth (1/12) of the sheriff's receipts of the previous year, whichever is the lesser.

Section 5. Subsequent Advancements (1) After receiving an initial advancement, a sheriff may receive subsequent advancements upon filing with the cabinet a request for advancement accompanied by an affidavit setting out the receipts and expenditures of the sheriff's office through the previous month.
(2) Upon receipt of a request for a subsequent advancement, the branch shall add the actual expenditures to date to the estimated expenditures for the current month, subtract the actual receipts of the office, and cause a warrant to be issued for the lesser of:
(a) The difference; or
(b) The amount requested, except that the warrant shall not exceed the lesser of $50,000 or one-twelfth (1/12) of the sheriff's receipts for the previous year.

Section 6. Refund Procedure. (1) A sheriff who has received an advancement of funds shall, on or before the tenth day of November, December, and January, file with the cabinet an affidavit stating the actual receipts and expenditures of the office for the preceding month. The affidavit shall be accompanied by a check made payable to the Treasurer of the Commonwealth of Kentucky in the amount that the receipts exceed the expenditures for the previous month; except that the total amount of money payable to the commonwealth shall not exceed the total of the advancements made to the sheriff during the preceding year.
(2) If the payment submitted as provided in Section 6(1) of this administrative regulation is less than the amount advanced to the sheriff during the preceding year, the sheriff shall, on or before January 15 of the year following the year in which the advancements are made, forward a check made payable to the Treasurer of the Commonwealth of Kentucky in the amount of the unpaid
balance.  
(3) An [No] advancement shall not be made to a sheriff unless the total amount advanced in the previous year has been repaid to the commonwealth.

R. B. RUDOLPH, JR., Secretary 
APPROVED BY AGENCY: January 15, 2005 
FILED WITH LRC: March 31, 2005 at 10 a.m. 
CONTACT PERSON: Ed Ross, Controller, and Kristen Webb, Legislative Director, Finance and Administration Cabinet, Room 484 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2210, fax (502) 564-6597.

GENERAL GOVERNMENT CABINET 
Board of Licensure for Professional Engineers and Land Surveyors 
(As Amended at ARRS, June 14, 2005)

201 KAR 18:030. In-training certificates.

RELATES TO: KRS 322.010, 322.040, 322.120 
STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.120, 322.290(4), 2005 Ky. Acts ch. 20, sec. 2, 3
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.010 defines engineer in training and land surveyor in training KRS 322.290(4) provides the board with the authority to promulgate administrative regulations necessary to perform its duties. This administrative regulation outlines the requirements under the certification program for in-training engineers and land surveyors under which the board has provided for early testing of basic sciences and fundamentals of engineering and land surveying.

Section 1. In-training Certificates: to provide an early test of abilities and knowledge of the basic sciences and fundamentals of engineering and land surveying, the board has established a plan for certification of engineers-in-training and land surveyors-in-training.

Section 2. Examinations are offered in the fundamentals of engineering (FE) and fundamentals of land surveying (FLS) provided by the National Council of Examiners for Engineers and Land Surveyors.

Section 2. Pursuant to [3–Final-year-as-referred-to-in] KRS 322.040 and 2005 Ky. Acts ch. 20, sec. 2, the final year shall begin upon Section 1[1][1(1a)][1(2)] and (1b) and Section 2[2][2(1)][2(2)] and (2) and (3) and (4) of KRS 322.290(4)(a) meaning completion of at least 105 semester credit hours in the program. (1) An individual is eligible to sit for the FE examination upon completion of at least 105 hours in a program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, or any engineering program deemed equivalent by the Board. 

(2) An individual is eligible to sit for the FLS examination upon completion of one (1) of the following:
(a) Graduation from high school or the equivalent followed by a four (4) years of satisfactory land surveying experience under the direct supervision of a professional land surveyor; 
(b) Graduation from a board approved program in land surveying from a college or university; 
(c) Graduation from a four (4)-year program other than land surveying accredited by one (1) of the Commission of the Accreditation Board for Engineering and Technology, followed by two (2) years of land surveying experience under the direct supervision of a professional land surveyor; or 
(d) Graduation from a two-(2)-year board approved program in land surveying followed by two (2) years land surveying experience under the direct supervision of a professional land surveyor.

Section 3. [A] A qualified applicant who passes the examination shall be issued a certificate of recognition as engineer-in-training or land surveyor-in-training. The certificate shall be valid indefinitely with no renewal fees.

Section 4. [5] The executive director is authorized to approve applications for the FE and FLS examinations.

B. DAVID COX, Executive Director 
APPROVED BY AGENCY: March 29, 2005 
FILED WITH LRC: March 30, 2005 at noon 
CONTACT PERSON: Donna G. Dutton, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (502) 573-2680, fax (502) 573-6687.

GENERAL GOVERNMENT CABINET 
Board of Licensure for Professional Engineers and Land Surveyors 
(As Amended at ARRS, June 14, 2005)

201 KAR 18:072. Experience.

RELATES TO: KRS 322.040, 2005 Ky. Acts ch. 20, sec. 2, 3 
STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.290(4), 2005 Ky. Acts ch. 20, sec. 2(3), 3(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040 provides that the board shall promulgate administrative regulations to establish requirements for consideration of experience gained prior to graduation from programs as described in the statute. This administrative regulation establishes these requirements.

Section 1. Evaluation of experience in engineering required under KRS 322.040 shall consider the following:

(1) Experience shall reflect increasing complexity of the engineering tasks and the progressive responsibility of the applicant.

(2) The applicant shall demonstrate knowledge of engineering mathematics, physical and applied sciences, properties of materials, the fundamental principles of engineering design and the application of engineering principles in the solution of engineering problems.

(3) A maximum of six (6) months of credit may be approved for experience completed prior to graduation under KRS 322.040, Section 4(1)(a). One (1) year of credit may be approved for completion of a master's degree in engineering in an EAC/ABET-accredited program, or one (1) deemed equivalent by the board. Credit shall not be granted for both experiences set out in the subsection.

(4) Experience that violates KRS Chapter 322 shall not be approved.

(5) Engineering experience gained in the military services may be approved.

(6) Sales experience may be approved if engineering principles were required and used in that experience.

(7) Experience gained in teaching advanced-level engineering-related courses in a four (4) year EAC/ABET-accredited program, or one (1) deemed equivalent by the board, may be approved.

(8) Experience gained in engineering research and design projects by faculty in an EAC/ABET-accredited program, or one (1) deemed equivalent by the board, may be approved.

(9) Experience may be approved for execution or supervision of construction projects designed by a professional engineer.

(10) The applicant shall demonstrate why experience not gained under the supervision of a professional engineer is eligible for credit.

(11) Qualifying experience shall be complete at the time of application for licensure.

Section 2. Evaluation of experience in land surveying required under 2005 Ky. Acts ch. 20, sec. 2 and 3 [KRS 322.040] shall consider the following:

(1) Land surveying experience shall reflect increasing complexity of the land surveying tasks and the progressive responsibility of the applicant.

(2) Experience shall include projects in which the applicant, while under the direct supervision of a practicing professional land surveyor, implemented work involving property conveyance and property boundary determination. The applicant shall also demon-
strate experience in the fieldwork aspects of property boundary determination.

(3) One (1) year of experience may be approved for completion of a master's degree in land surveying from a board-approved program in land surveying from a college or university.

(4) A maximum of two (2) years of experience shall [will] be approved for land surveying work prior to graduation under 2005 Ky. Acts ch. 20, sec. 2(KRS 322.040; Section-2(1)(c)1, 2, 3 and Section-3(1)(a)1 and 2.

(5) Experience that violates KRS Chapter 322 shall not be approved.

(6) Land surveying experience gained in the military services may be approved.

(7) A maximum of two (2) years of experience may be approved for teaching land surveying courses at the postsecondary level.

(8) Qualifying experience shall be complete at the time of application.

(9) Notwithstanding paragraphs (3), (4), and (7), in no case shall an applicant's experience gained after graduation be less than two (2) years.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: March 29, 2005
FILED WITH LRC: March 30, 2005 at noon
CONTACT PERSON: Donna G. Dutton, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, phone (800) 573-2680, fax (502) 573-6687.

GENERAL GOVERNMENT CABINET
Board of Licensure for Professional Engineers and Land Surveyors
(As Amended at ARRS, June 14, 2005)


RELATES TO: KRS 322.010, 322.040, 322.120, 322.290(4)
STATUTORY AUTHORITY: KRS 322.040, 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: 2005 Ky. Acts ch. 20, sec. 2(3) [KRS 322.040] provides that the board shall promulgate administrative regulations to establish requirements for the surveying core curriculum as described in 2005 Ky. Acts ch. 20, sec. 2[Section-3(1)(c)2 and 3. This administrative regulation establishes these requirements.

Section 1. The core curriculum in land surveying and related areas referred to in 2005 Ky. Acts ch. 20, sec. 2[KRS 322.040; Section-2(1)(c)2 shall consist of twenty-four (24) semester credit hours from a board-approved college or university as follows:

(1) A minimum of twelve (12) semester credit hours in at least three (3) of the following subject areas:

[a] Principles of Surveying;
[b] Professional Ethics and Conduct;
[c] Computer Graphics related to land surveying;
[d] Geographic Information Systems;
[e] Route Surveying;
[f] Land Boundary Location or Law;
[g] Land and Boundary Law.

(2) The remainder of the twenty-four (24) semester credit hours shall come from the following subject areas:

[a] Automated Surveying and Mapping;
[b] Geodetic Surveying;
[c] Geodetic Surveying;
[d] Photogrammetry;
[e] Subdivision and Land Use Planning;
[f] Advanced Surveying Measurement;
[g] Construction Surveying;
[h] Public Land Systems;
[i] Remote Sensing Applications or
[j] Land and Mine Surveying.

Section 2. The twelve (12) semester credit hours of the core curriculum in land surveying referred to in 2005 Ky. Acts ch. 20, sec. 2(KRS 322.040, Section-2(1)(c)3 shall consist of the twelve (12) hours described in subsection (1) above.

B. DAVID COX, Executive Director
APPROVED BY AGENCY: March 29, 2005
FILED WITH LRC: March 30, 2005 at noon
CONTACT PERSON: Donna G. Dutton, General Counsel, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, Kentucky 40601, (800) 573-2680, fax (502) 573-6687.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 14, 2005)

301 KAR 2:682. Transportation and holding of exotic wildlife.

RELATES TO: KRS 150.010, 150.180, 150.280, 150.290, 150.305
STATUTORY AUTHORITY: KRS, 150.025(1), 150.180(6),
150.280
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.280 authorizes the department to promulgate administrative regulations establishing procedures for the holding of protected wildlife. KRS 150.180(6) requires a person transporting live wildlife into Kentucky to obtain a permit from the department. This administrative regulation establishes the procedure for obtaining a transportation permit for exotic wildlife, prohibits the importation and possession [or-holding] of exotic species with the potential to damage native ecosystems, and places restrictions on importing species that are potentially dangerous to human health and safety.

Section 1. Definition "Exotic wildlife" means terrestrial wildlife species which have never naturally existed in the wild in Kentucky including siamese (Sturnus vulgaris), English or house sparrow (Passer domesticus), and Eurasian collared dove (Streptopelia decaocto).

Section 2. Prohibited Species. (1) Except as specified in subsection (3) [or-3] of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:

(a) Baya weaver (Ploceus philippinus);
(b) Blackbirds (Genus Agelaius), except native species;
(c) Cape sparrow (Passer melanurus);
(d) Cowbirds (Genus Molothrus), except native species;
(e) Cuckoo (Family Cuculidae), except native species;
(f) Dioc or red-bellied quelea (Quelea quelea);
(g) European blackbird (Turdus merula);
(h) Fieldfare (Turdus pilaris);
(i) Flying fox or fruit bat (Genus Pteropus);
(j) Gambian giant pouched rat (Cricetomys gambianus);
(k) Gart, [or] marne, or cane toad (Bufo manns);
(l) Hawaiian rice bird or spotted munia (Lonchura punctalata nisora).
(m) Jack rabbit (Genus Lepus);
(n) Jave sparrow (Padda orezvora);
(o) Madagascar weaver (Foudia madagascariensis);
(p) Mistle thrush (Turdus viscivorus);
(q) Monk or Quaker parakeet (Myiopsitta monachus);
(r) Multimammate rat (Subgenus Mastomys);
(s) Mute swan (Cygnus olor);
(t) Nutria (Myocastor coypus);
(u) Prairie dog (Cynomys spp.);
(v) Raccoon dog (Nyctereutes procyonoides);
(w) San Juan rabbit (Coturnixx cuniculus);
(x) Sky lark (Alauda arvensis);
(y) Song thrush (Turdus philomelos);
(z) Starlings (Family Staridae) including pink starlings or rosy pastors (Sturnus roseus), except for Indian Hill myselfs (Gracula religiosa);
(aa) Suricate or slender-tailed meerkat (Genus Suricata);

- 53 -
(bb) Tongueless or African clawed frog (Aenopus laevis);
(cc) Weaver finches (Genus Passer), except Passer domesticus;
(dd) White eyes (Genus Zosterops);
(ee) Wild European rabbit (also called San Juan Rabbit) not distinguishable morphologically from native wild rabbits;
(ff) Yellowhammer (Emberiza citrinella);
(gg) A member of the following families:
   1. Suidae (pigs or hogs), except for domestic swine;
   2. Viverridae ( civets, genets, linsangs, mongooses and fossas);
   3. Tayassuidae (peccaries and javelinas).
(2) Prohibited inherently-dangerous wildlife. Except as specified in subsections (3) and (5) of this section, a person shall not import or transport through Kentucky or possess in Kentucky the following:
(a) Adders or vipers (Family Viperidae and Crotalidae) (except native species);
(b) Alligators or caimans (Family Alligatoridae);
(c) African buffalo (Syncerus caffer);
(d) (Baboons, drills or mandrills (Genus Papio);
(e) Bears (Family Ursidae);
(f) Cheetah (Acinonyx jubatus);
(g) Clouded leopard (Neofelis nebulosa);
(h) Cobras or coral snakes (Family Elapidae);
(i) Crocodylidae (Family Crocodylidae);
(j) Elephants (Family Elephantidae);
(k) Gavials (Family Gavialidae);
(l) Gelada baboon (Theropithecus gelada);
(m) Gila monsters or beaded lizards (Family Helodermatidae);
(n) Gorillas (Family Pongidae);
(o) Hippopotamus (Hippopotamus amphibius);
(p) Horse badger or rattle (Mellivora capensis);
(q) Hyenas (Family Hyaenidae), all species except aardwolves (Proteles cristatus);
(r) Komodo dragon (Varanus komodoensis);
(s) Lions, leopards, or tigers (Genus Panthera);
(t) Old world badger (Meles melas);
(u) Primates nonhuman (Order Primates);
(v) Rhinoceroses (Family Rhinocerotidae);
(w) Sea snakes (Family Hydrophidiae);
(x) Snow leopard (Uncia uncia);
(y) Venemous rear-fanged species (Family Colubridae) except hognose snakes (Genus Heterodon);
(z) Wolverine (Gulo gulo) or [ ]
(3) Upon written request, the commissioner may authorize the importation or possession of the species listed in subsection (4) of this section by circuses or for legitimate scientific or educational purposes by:
(a) A zoo or facility that is:
   1. Accredited by [ ]
   2. Designated as the official zoo of a municipality.
(b) A government agency;
(c) A college or university; or [ ]
(d) A licensed or accredited [ ] educational or research institution; or [ ]
(e) A lawfully operated circus or rodeo; or [ ]
(f) A person or organization requesting exemption for medical purposes.
(4) A person may temporarily transport or display a prohibited animal listed in this section through the state for less than ninety-six (96) hours if at all times the animal is maintained within a confinement sufficient to prevent the animal from escaping.
(5) Possession of an inherently-dangerous animal prior to the effective date of the amendment to this administrative regulation is not prohibited.
(a) A person who legally possesses an inherently-dangerous animal as defined in subsection 2 of this section prior to the effective date of the amendment to this administrative regulation may possess the animal.
(b) The person shall maintain:
   1. Veterinary records;
   2. Acquisition papers for the animal; or
   3. Any other documents that establishes that the person possessed the animal prior to the effective date of the amendment to this administrative regulation.
(a) A legally-possessed inherently-dangerous animal shall not be bred by a person who does not have an exemption as established in Section 2(3) of this administrative regulation.
(b) A legally-possessed inherently-dangerous animal shall not be replaced by a person who does not have an exemption as established in Section 2(3) of this administrative regulation.
(c) If any inherently-dangerous animal escapes, either intentionally or unintentionally, the owner of the animal shall immediately contact the department to report the escape or release.

Section 3. Exotic Wildlife. Unless listed in Section 2(1) of this administrative regulation, or otherwise protected by state or federal law, exotic wildlife shall not:
(1) Be classified as protected wildlife; and
(2) Require a permit from the department for possession.

Section 4. Transportation Permits and Certificate of Veterinary Inspection. (1) Prior to entry into Kentucky, an annual or individual transportation permit as established in 301 KAR 2:081 shall be obtained for all shipments of wildlife. Persons shall be responsible for applying for a transportation permit who:
(a) Receive a shipment of wildlife;
(b) Import wildlife for their own use or possession; or
(c) Transport wildlife into and through the state to a destination outside Kentucky.
(2) A copy of a valid transportation permit shall accompany all shipments of wildlife into Kentucky.
(a) Individual transportation permits shall be valid for one (1) shipment of wildlife.
(b) Annual transportation permits shall be valid for multiple wildlife shipments for one (1) year from the date of issue. Annual transportation permits shall:
   1. Notify the department in writing of any changes or additions subsequent to the original application so that an amended permit may be issued prior to subsequent wildlife importation; and
   2. Notify the department by telephone Monday through Friday between 8 a.m. and 4:30 p.m. at least forty-eight (48) hours prior to each shipment of wildlife of the date of expected shipment; source of the shipment; and the species being shipped.
(3) All shipments of wildlife shall be accompanied by a certificate of veterinary inspection stating that the wildlife is free of symptoms of disease. A federal quarantine certificate may be substituted for the certificate of veterinary inspection.

Section 5. Inherently-Dangerous Animals. If not an institution listed in Section 2(2) of this administrative regulation, the transportation permit application shall be accompanied by a signed statement from the local authority having jurisdiction over where the animal will be kept, certify that the possession of the following dangerous exotic species is not prohibited by local ordinance.
(1) Adders or vipers (Family Viperidae);
(2) Alligators or caimans (Family Alligatoridae);
(3) African buffalo (Syncerus caffer);
(4) Baboons, drills or mandrills (Genus Papio);
(5) Cheetah (Acinonyx jubatus);
(6) Clouded leopard (Neofelis nebulosa);
(7) Cobras or coral snakes (Family Elapidae);
(8) Crocodylidae (Family Crocodylidae);
(9) Elephants (Family Elephantidae);
(10) Gavials (Family Gavialidae);
(11) Gelada baboon (Theropithecus gelada);
(12) Gila monsters or beaded lizards (Family Helodermatidae);
(13) Gorillas (Family Pongidae);
(14) Goliath groupers (Genus Pinguipus);
Section 5. [6.] The following animals shall not require permits from the department for importation:

1. Alpaca (Lama pacos);
2. American bison (Bison bison);
3. Breeds and varieties of goats derived from the wild goat or bezoar (Capra aegagrus);
4. Camels (Camelus bactrianus and Camelus dromedarius);
5. Chinchillas (Chinchilla laniger);
6. Cockatoos (family Cacatuidae);
7. Domesticated races of ducks and geese (family Anatidae) distinguishable morphologically from wild ducks or geese;
8. Domesticated races of the European rabbit (Oryctolagus cuniculus) distinguishable morphologically from wild rabbits;
9. Domesticated races of mink (Mustela vison), if:
   a. Adults are heavier than 1.15 kilograms; or
   b. The fur color can be distinguished from wild mink;
10. Domestic swine, except free-roaming or feral wild boars or wild swine;
11. Domesticated races of rats (Rattus norvegicus or Rattus rattus) or mice (Mus musculus);
12. Domesticated races of turkeys (Meleagris gallopavo) recognized by the American Poultry Association and the U.S. Department of Agriculture; but shall not include captive held or bred wild turkeys;
13. Domestic yak (Bos grunniens);
14. Gerbils (Meriones unguiculatus);
15. Guinea fowl (Munida megaegea);
16. Guinea pigs (Cavia porcellus);
17. Hamsters (Mesocricetus spp.);
18. Indian Hill mynahs (Gracula religiosa);
19. Llama (Lama glama),
20. Parrots, lovebirds, cockatiels, budgerigars, parakeets except monk parakeet (M. monachus), macaws (family Psittacidae);
21. Peafowl (Pavo cristatus);
22. Pigeons (Columba domestic as or Columba livia) or domesticated races of pigeons;
23. Rattles, as defined by KRS 247.870; and
24. Toucans (family Ramphastidae);

Section 6. [7.] Applying for Permits. (1) All applications for transportation permits shall be made on standard forms.

2. The applicant shall indicate the source of supply of the wildlife.

3. After the permit is issued, the permit holder shall retain a bill of sale or other written proof to show that the wildlife was obtained from a legal source.

4. A permit holder shall show this written proof to a conservation officer upon request.

5. Applicants shall possess an approved permit before acquiring animals.

6. Failure to provide accurate, truthful and complete information on the application form shall result in:

   a. Immediate withdrawal or revocation of the permit; and
   b. Confiscation of the wildlife imported under the permit.

Section 7. [8.] Endangered Species. A permit shall not be issued for the transportation or possession of federally endangered or threatened species without obtaining prior approval from the commissioner. The commissioner may grant approval for legitimate scientific or educational purposes for:

1. A zoo that is:

   a. Accredited [A-member-of] the American Zoo and Aquarium Association; or
   b. Designated as the official zoo of a municipality;
2. A government agency;
3. A college or university; or
4. A similar educational or research institution.

Section 8. [9.] Inspections. A person holding exotic wildlife shall allow a conservation officer to inspect the holding facilities at any reasonable time.

Section 9. [10.] Release. With the exception of pheasants and chukars, a person shall not release exotic wildlife into the wild.

Section 10. [41.] Incorporation by Reference. (1) The following material is incorporated by reference:

2. Annual Transportation Permit Application, July 2003 edition;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JONATHAN GASSETT, Ph.D., Interim Commissioner
W. JAMES HOST, Secretary
APPROVED BY AGENCY: May 13, 2005
FILED WITH LRC: May 13, 2005 at noon
CONTACT PERSON. Jim Lane, Program Coordinator, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3460, fax (502) 564-0506.

COMMERCE CABINET
Kentucky Department of Fish and Wildlife Resources
(As Amended at AARRS, June 14, 2005)

301 KAR 2:144. Fall wild turkey hunting.

RELATES TO. KRS 150.175(1)(k), 150.305, 150.360, 150.390, 150.990(11)
STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for fall firearm and archery turkey seasons.

Section 1. Seasons and Shooting Hours. (1) Archery season shall be the first Saturday in September through the third Monday in January.

2. Firearm season shall be the fourth Saturday in October for seven (7) consecutive days and the first Saturday in December for seven (7) consecutive days.

3. A person may take a wild turkey from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

Section 2. Legal Weapons. Firearms, archery and crossbow equipment shall meet the specifications established in 301 KAR 2:140, Section 5.

(1) Fall archery season.

(2) Archery equipment may be used, [the-entire-archery-season, and]

(3) Crossbows may be used beginning November 4 through the third Monday in January.

(2) Fall firearm season — archery equipment, crossbows, and firearms may be used.]

Section 3 Bag Limits. A person shall not take more than:

1. One (1) wild turkey per day;
2. Two (2) wild turkeys of either sex during the fall archery season [regardless-of-weapons-chosen]; and
3. Two (2) wild turkeys of either sex during the fall firearm season.

Section 4. Hunter Orange. Wild turkey hunters shall wear hunter orange during the fall firearm deer season as established in 301 KAR 2:172, Section 4
VOLUME 32, NUMBER 1 – JULY 1, 2005

Section 5. Use of Dogs. Dogs may be used to aid in taking turkey.

Section 6. Wildlife Management Areas. Unless specified below, Wildlife Management Areas shall be open to fall wild turkey hunting under the state-wide requirements specified in Sections 1 through 4 of this administrative regulation and 301 KAR 2:140

(1) Ballard Wildlife Management Area A person shall not hunt wild turkeys during the fall firearm or archery season.

(2) Barren River Wildlife Management Area. On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person:
(a) Shall not hunt during the fall firearm season with a breaching-loading firearm;
(b) May use a muzzleloader or crossbow during the fall firearm season; and
(c) May use a crossbow during the fall archery season.

(3) Higginson-Henry Wildlife Management Area.

(4) Pioneer Weapons Area A person may use a crossbow during the fall archery turkey season.

(5) Main block of Robinson Forest. A person shall not hunt wild turkeys during the fall firearm or archery season except persons participating in a department-authorized hunt.

(6) Swan Lake Wildlife Management Area. A person shall not hunt wild turkeys during the fall firearm or archery season except persons participating in a department-authorized hunt.

MARK S. CRAMER, Deputy Commissioner
For Jonathan Gassett, Intern Commissioner
W. JAMES HOST, Secretary
APPROVED BY AGENCY: May 13, 2005
FILED WITH LRC: May 13, 2005 at noon
CONTACT PERSON: Dan Fidget, Fish and Wildlife Program Manager, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 14, 2005)

301 KAR 2:172. Deer hunting seasons and requirements.

RELATES TO. KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.350, 150.370, 150.380, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 grants the department authority to establish hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes deer hunting seasons, prescribes legal methods of taking and establishes tagging and checking requirements for deer hunting.

Section 1. Definitions. (1) "Adult" means an individual 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, 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 which, 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 which 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 which is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun or handgun which 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-only deer.

(17) "Zone" means the grouping of counties as stipulated in 301 KAR 2:174, Deer hunting zones.

(18) [473] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

Section 2. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170, a person hunting deer shall have 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 may use no more than two (2) junior deer hunting permits. No more than one (1) permit shall be used for taking an antlered deer.

(3) Unless exempted by KRS 150.170, a person hunting wild hogs or coyotes during a season or Wildlife Management Area hunt where a firearm is allowed for deer hunting, shall have proof of purchase of a valid Kentucky hunting license and valid deer permit.

(4) A person whose name does not appear on a license or permit shall not use that license or permit to harvest deer.

(5) Unless exempted by KRS 150.170, bonus antlerless permits 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) May be in the woods or stands before or after daylight hours, but shall not take deer except during daylight hours;

(b) Shall not use dogs, except he or she may use leashed tracking dogs to recover an killed deer;

(c) Shall not take swimming deer; and

(d) Shall not take deer from a vehicle, boat, or while on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform.

(2) A deer hunter shall not take a deer with any device except a firearm, crossbow or archery equipment.

(3) A deer hunter shall not use or possess while deer hunting:

(a) Ramfire ammunition;

(b) A fully-automatic firearm;

(c) A firearm with a magazine capacity greater than ten (10) rounds;

(d) Steel-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.

(4) Persons hunting deer shall not carry a firearm, except when a firearms deer season is open.

Section 4. Hunter Orange Clothing Requirements. (1) During the modern gun deer season, muzzle-loader season or the youth firearm season, a person hunting any species, and any person
accompanying a hunter, shall display solid, unbroken hunter-orange visible from all sides on the head, back, and chest.  

(b) Remain in a position to take immediate control of the youth’s firearm.  

(2) During the elk firearm season, a person hunting any species, and any person accompanying a hunter within the sixteen (16) county elk zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest.  

(3) These requirements [(c) This requirement] shall not apply to a person:  

(a) Hunting waterfowl; or  

(b) Hunting at night.  

(d) [i][i] 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) [(d)] A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.  

Section 5. Statewide Season Dates. (1) A deer hunter may use archery equipment [or a crossbow] 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 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 statewide:  

(a) For ten (10) days beginning on the Monday after Thanksgiving (Beginning November 1 through the third Monday in January); and  

(b) During any season when a firearm may be used to take deer.  

(5) [(i)] Youth firearms season. For two (2) consecutive days beginning on the second Saturday in October, a youth may take antlered or antlerless deer with a firearm.  

(6) [(f)] Free youth weekend. For two (2) consecutive days beginning on the Saturday after Christmas, a youth may hunt deer without a hunting license or deer permit. Statewide bag limits and harvest-reporting requirements shall apply.  

Section 6. Season and Zone Limits. (1) Except as provided in 301 KAR 2:178, 301 KAR 2:111 and 301 KAR 2:176, in a license year, a person shall not take more than:  

(a) One (1) antlered deer;  

(b) The number of antlerless deer permitted in the zones specified in subsections (2) and (3) of this section; or  

(c) The total number of deer permitted in the zones specified in subsections (2) and (3) of this section.  

(2) In zone 1, a person may take an unlimited number of antlerless deer, provided that the person has purchased the appropriate bonus antlerless permits.  

(3) In zones 2, 3, and 4, a person may take a total number of four (4) deer, provided that the person has purchased the appropriate bonus antlerless permits.  

(4) Legal weapons. A person shall take deer only with the weapons specified for each zone below:  

(a) Zones 1 and 2. Deer may be taken with any weapon;  

(b) Zone 3. Only two (2) deer may be taken with a firearm; and  

(c) Zone 4.  

1. Only two (2) deer may be taken with a firearm; and  

2. Antlerless deer shall not be legal during the modern firearm season or the early muzzleloader season.  

Section 7. Supervision of Youth Firearms 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) An adult accompanying a youth during the youth firearm season shall not carry a firearm.  

Section 8. Harvest Recording. Immediately after taking a deer, a person shall:  

(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 KDWS agent; or  

(e) An index card or reasonable facsimile thereof; and  

(2) Retain the completed hunter’s log in his possession whenever the hunter is in the field during the current season.  

Section 9. Checking a Deer. (1) A person shall check a harvested deer by:  

(a) Calling the toll free number listed in the current fall hunting and trapping guide on the day the deer is harvested;  

(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 described in Section 8 of this administrative regulation.  

(2) If a harvested deer leaves the possession of a hunter, the hunter shall attach a hand-made tag, which contains the confirmation number, hunter’s name, and a phone number, to the carcass.  

(3) A person shall not knowingly provide false information when completing the hunter’s log, checking a deer, or creating a carcass tag.  

Section 10. 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 submit deer taken outside Kentucky or in violation of any governing statute or administrative regulation for a state or national trophy deer listing; and  

(d) Not sell deer hides except to a licensed:  

1. Fur buyer;  

2. Fur processor; or  

3. Taxidermist.  

(2) A taxidermist or other individual who commercially butchers deer shall:  

(a) Not accept deer carcasses or any part of a deer without a proper carcass tag described in Section 9 of this administrative regulation; and  

(b) Keep accurate records of the hunter’s name, address, confirmation number, and date received for each deer in his possession, and retain such records for a period of one (1) year.  

MARK S. CRAMER, Deputy Commissioner  

For JONATHAN GASSETT, Interim Commissioner  

W. JAMES HOST, Secretary  

APPROVED BY AGENCY: May 13, 2005  

FILED WITH LRC: May 13, 2005 at noon  

CONTACT PERSON: Dan Figert, Fish & Wildlife Program Manager, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.
VOLUME 32, NUMBER 1 – JULY 1, 2005

COMMERCIAL CROP DEPARTMENT
Department of Fish and Wildlife Resources
(As Amended at ARRS, June 14, 2005)


RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.590

STATUTORY AUTHORITY: 150.025(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) 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. 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.

Section 1. Definitions. (1) "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) "Mentor hunt" means a quota youth hunt in which the adult accompanying the youth is eligible to take a deer.

(3) "Modern firearm season" means the ten (10) or sixteen (16) consecutive days beginning the second Saturday in November when breech-loading firearms may be used to take deer.

(4) "Private inholding" means privately-owned property completely surrounded by a Wildlife Management Area.

(5) "Quota hunt" means a Wildlife Management Area deer hunt, including a youth quota hunt, where a participant is selected by a random drawing.

(6) "Quota youth hunt" means an adult-accompanied hunt in which only persons under age sixteen (16) are eligible to apply and to take deer.

(7) "Statewide deer requirements" mean the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 301 KAR 2:174.

(8) "Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.

(9) "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) 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, Section 6(f), unless otherwise noted [archery hunting is allowed under statewide archery requirements unless otherwise noted].

(3) On a WMA and Meade-Westvaco Public Hunting Area, 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 his name and address; and

(e) Shall not use an existing permanent tree stand.

(4) The owner of a private inholding or his guest:

(a) May hunt on the owner's lands without application; and

(b) Shall follow all other requirements for the WMA which surrounds the inholding.

(5) A person shall not hunt on a private inholding when deer hunting is not allowed on the surrounding WMA.

(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;

(b) To accompany a youth hunting in a youth quota or mentor hunt;

(c) To accompany a movement-impaired hunter that 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.

(7) Except if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear 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 firearms elk season is in progress.

(8) A person shall not place, distribute or hunt over bait as prohibited in 301 KAR 3.010.

Section 3. General Quota Hunt Procedures. (1) A person who is not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.

(2) A random selection of those with preference points shall be made for each year's quota hunts before those without preference points are chosen.

(3) 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.

(4) Youth hunters may apply for one (1) youth quota hunt and one (1) general quota hunt.

(5) 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.

(6) 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 2:174 shall be governed by the most liberal zone requirements of the zones in which it lies.

(7) 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 deer 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 applicants to the quota hunts who were not selected in the original drawing. This person shall receive one (1) deer permit which 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 his 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 youth hunting in a youth quota or mentor hunt.

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 his Social Security number;

(2) Possess an annual Kentucky hunting license, except a person on military furlough for more than three (3) days who shall show his military identification and status instead of a license;
VOLUME 32, NUMBER 1 – JULY 1, 2005

(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) Possess an unused bonus deer permit, if he has already taken the two deer authorized by possession of the statewide deer permit;
(6) Not be required to possess a deer permit if he possesses and presents a senior/disabled combination hunting and fishing license at time of check-in;
(7) Hunt on assigned date and in assigned areas selected by random drawing of applicants when necessary;
(8) Comply with hunting equipment restrictions specified by the type of hunt;
(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, except as otherwise specified in this administrative regulation;
(10) Except as otherwise specified in this administrative regulation, check out:
   (a) When finished hunting;
   (b) When the hunter’s bag limit is reached; or
   (c) By 8 p.m. Eastern time on the final day of the hunt;
   (11) Be declared ineligible to apply for the next year’s drawing if the hunter fails to check out properly; and
   (12) Comply with all quota hunt requirements [rules], including the fifteen (15) inch minimum outside antler spread harvest restriction for antlered deer when in effect, or be ineligible to apply for a quota hunt the following year.

Section 6. WMA Hunting Dates, Requirements and Restrictions. (1) Adair WMA. The crossbow season shall be open under statewide deer requirements [area shall be closed to firearm deer hunting] [crossbow season shall be open under statewide deer requirements]

(2) Ballard WMA.
   (a) The quota youth hunt shall be for any deer or antlerless deer as determined by a random drawing, and shall be for two (2) consecutive days beginning the fourth Saturday in October.
   (b) The quota hunt shall be for any deer or antlerless deer as determined by a random drawing, for two (2) consecutive days beginning on the first Saturday in November.
   (c) This area shall be closed to the statewide archery season.
   (d) The crossbow [crossbow] modern firearm, youth firearm season and muzzleloader seasons shall be open under statewide deer requirements only on the 400 acre tract south of Saline Crne Road.

(3) Barren River WMA.
   (a) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person;
   1. [-1] shall not hunt deer with a breech-loading firearm and
   2. May hunt deer with a crossbow [and 2 - May hunt deer with a crossbow]
   (b) The youth firearm season shall be open under statewide deer requirements.
   (c) The crossbow [crossbow] modern firearm, and [ muzzleloader seasons shall be open under statewide deer requirements with equipment restrictions as noted in paragraph (a) of this subsection.

(4) Beaver Creek WMA. The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.
   (a) The limit shall be one (1) deer during the quota hunt.
   (b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(5) Boatwright WMA.
   (a) On the Swan Lake Unit, the archery season shall be open under statewide deer requirements through October 14 and the October youth deer season shall be open under statewide deer requirements; and
   (b) On the Peal Unit and Olmstead Unit, the crossbow [crossbow] youth firearm, modern firearm and muzzleloader seasons shall be open under statewide deer requirements.

(6) Cedar Creek Lake WMA. The crossbow season shall be open under statewide deer requirements [area shall be closed to firearm deer hunting] [Archery and crossbow shall be open under statewide deer requirements]

(7) Central Kentucky WMA. The archery hunt shall be for any deer:
   (a) On Wednesdays, between the second week 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.

(8) Clay WMA.
   (a) On the main tract, crossbow and [crossbow-and] youth firearm seasons [season] [seasons] shall be open under statewide deer requirements, except archery hunting shall be prohibited during the quota fox hunting field trials as established in 301 KAR 2 049.
   (b) On the Marietta Booth Tract, the [crossbow-and] youth firearm seasons shall be open under statewide deer requirements.
   (c) The quota hunt shall be for any deer and shall be for two (2) consecutive days beginning the first Saturday in November.

(9) Dewey Lake WMA.
   (a) The youth firearm season shall be open under statewide deer requirements.

(10) Dix River WMA. The crossbow [crossbow] youth firearm, [and] muzzleloader seasons shall be open under statewide deer requirements

(11) Fishtrap Lake WMA.
   (a) The quota hunt shall be for any deer for two (2) consecutive days beginning on the Saturday before Thanksgiving. The limit shall be one (1) deer.
   (b) The youth firearm season shall be open under statewide deer requirements.

(12) 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 the first 300 youth hunters age 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;
   4. Check-out as follows, a. When finished hunting;
   c. By 8 p.m. Eastern Time on the final day of the hunt;
   (b) Have a two (2) deer bag limit, only one (1) of which may be an antlered deer.

(13) Green River Lake WMA.
   (a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.
   (b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
   (c) 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.
(14) Higginson-Henry WMA. 
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in December. 
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches. 

25. J.C. Williams WMA. The crossbow season shall be open under statewide deer requirements [area shall be closed to firearm deer hunting] [The crossbow season shall be open under statewide deer requirements].

(16) Kentucky River WMA. The crossbow season shall be open under statewide deer requirements [area shall be closed to firearm deer hunting] [The crossbow season shall be open under statewide deer requirements].

(17) Kleber WMA.
(a) The crossbow season shall be open under statewide deer requirements, except during a quota hunt.

(b) [The crossbow season shall be open under statewide deer requirements, except during a quota hunt.

(b) The quota hunts shall be for any deer 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) [To] [6] The youth firearm season shall be open under statewide deer requirements.

(18) Lake Barkley WMA. Open under statewide requirements for deer except that the North Refuge is closed from November 1 to February 15 and 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 deer requirements, except that the use of centerfire rifles and handguns shall be prohibited.
(b) The muzzleloader season shall be open as follows:
1. The October season shall be open under statewide requirements; and
2. In the December season, only archery and crossbow [and crossbow] equipment shall be permitted.
(c) The crossbow season shall be open under statewide deer requirements.

(c) The crossbow season shall be open under statewide deer requirements.

(20) [19] Curtis Gates Lloyd WMA. The crossbow season shall be open under statewide deer requirements [area shall be closed to firearm deer hunting] [The crossbow season shall be open under statewide deer requirements]

(21) Meade-Westvaco public hunting areas. Statewide deer requirements shall apply. In addition, a person hunting on Meade-Westvaco property:
(a) Shall possess a Meade-Westvaco Hunting Permit;
(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line; and
(c) The portion of the area south of Westvaco Road shall be open to archery deer hunting through October 31 and closed to public access between November 1 and March 15. The area shall be open for the statewide October youth firearm season and early muzzleloader weekend.

(22) [21] Mill Creek WMA. The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November. The limit shall be one (1) deer.

[22] Mud Camp Creek WMA. The crossbow [crossbow] youth firearm, [and] muzzleloader seasons shall be open under statewide deer requirements.

(24) Multins WMA. The crossbow season shall be open under statewide deer requirements [area shall be closed to firearm deer hunting] [The crossbow season shall be open under statewide deer requirements].

(25) Ohio River Islands WMA. On the Stewart Island Unit:
(a) The muzzleloader season shall be for any deer for two (2) days beginning the third Saturday in October.
(b) The archery season shall be for any deer from the first Saturday in September through October 14.

(26) Paintsville Lake WMA. 
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November. 
(b) The youth firearm season shall be open under statewide deer requirements.

(c) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(27) Peabody WMA. 
(a) The crossbow, [crossbow] youth firearms and muzzleloader seasons shall be open under statewide deer requirements.

(b) The modern firearm season shall be open under statewide deer requirements for ten (10) consecutive days beginning the second Saturday in November.

(28) Perryville Forest-Tract water WMA.
(a) The quota hunt shall be for any deer for two (2) consecutive days beginning the first Saturday in November.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.

(29) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:
(a) Shall not use a breech-loading gun or any other type of modern firearm;
(b) Shall not use an in-line muzzleloading gun; [and]
(c) Shall not use a scope or optical enhancement; and
(d) May use a crossbow during the entire archery season.

(30) [60] Dr. James R. Rich WMA.
(a) The crossbow season shall be open under statewide deer requirements, except during a quota hunt.

(b) [The crossbow season shall be open under statewide deer requirements, except during a quota hunt.

(b) The quota hunts shall be for any deer 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) [66] The youth firearm season shall be open under statewide deer requirements.

(31) [60] Sloughs WMA.
(a) On the Sauquahechee Unit, the archery, muzzleloader and youth firearm seasons shall be open under statewide deer requirements through October 31, except that the Crenshaw and Duncan II Tracts shall be open under statewide deer requirements through November 27.

(b) On the remainder of the WMA, the crossbow, [crossbow] modern firearm, muzzleloader and youth firearm seasons shall be open under statewide deer requirements.

(32) [31] South Fork Public Hunting Area. 
(a) The youth firearm, October muzzleloader and modern firearm seasons shall be open under statewide deer requirements through November 14, except that the use of centerfire rifles and handguns shall be prohibited.
(b) The archery season shall be open under statewide deer requirements, except the area shall be closed November 15 through January 15.

(33) [33] Starfire, Paul Van Boeun and Robinson Forest WMAs.
(a) A person shall not hunt deer on the main block of Robinson Forest [except for persons participating in a department-authorized hunt.
(b) The muzzleloader, modern firearm, and youth firearm seasons shall be open under statewide deer requirements, except a person shall not hunt deer with a modern gun [unless participating in a department-authorized hunt [firearm].

(c) The October youth deer season shall be open under statewide deer requirements.

(34) [33] T.N. Sullivan WMA. The crossbow season shall be open under statewide deer requirements [area shall be closed to firearm deer hunting] [The crossbow season shall be open under statewide deer requirements].

(35) [34] R.F. Tarter WMA. The crossbow, [crossbow] youth firearm and muzzleloader seasons shall be open under statewide deer requirements.

(35) [46] Taylorsville Lake WMA.
(a) The quota hunt shall be for any deer as follows:
1. Two (2) consecutive days beginning the first Saturday in November;
2. Two (2) consecutive days beginning the first Saturday in December;
3. Two (2) consecutive days beginning the second Saturday in January.
(b) The youth firearm season shall be open under statewide deer requirements.
(c) The crossbow season shall be open under statewide deer requirements, except that it shall be closed during the quota hunt.
(d) The crossbow season shall be open under statewide requirements, except that it shall be closed during the quota hunt.
(e) The Twin Eagle WMA. The crossbow season shall be open under statewide deer requirements, except that it shall be closed during the quota hunt.
(f) The Twin Eagle WMA. The crossbow season shall be open under statewide deer requirements, except that it shall be closed during the quota hunt.
(g) The Twin Knobs Campground. The quota hunt shall be for any deer on the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3.026.
(h) The area shall be closed to the statewide archery season.

(39) [369] Twin Knobs Campground. The quota hunt shall be for any deer on the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3.026.
(39) [369] Twin Knobs Campground. The quota hunt shall be for any deer on the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3.026.
(39) West Kentucky WMA.
(a) All tracts, except Tract 8A, shall be open under statewide deer requirements for the archery and crossbow seasons. (and crossbow season) except that the area shall be closed during the 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) The quota hunt shall be for any deer on the second Saturday in November.
(d) The firearms season shall:
1. Be the second Saturday after Thanksgiving (fourth Saturday in November) for two (2) consecutive days; and
2. Be limited to the first 300 hunters;
3. Require 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; and
4. Check out as follows:
   a. When finishing hunting; and
   b. When 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 bow and crossbow permits apply; and
   7. Except to travel through West Kentucky WMA on an established public road or to use an area designated open by a person, who has a person, who has not checked-in shall not enter the West Kentucky WMA during season.
   (e) Firearm hunters shall not use a breech-loading rifle or breech-loading handgun.
   (f) A person shall not carry a firearm in posted zones.
   (g) Archery and crossbow hunters shall check-in with U.S. Energy Corporation security personnel before hunting on the "A" Tracts.
(39) [369] Yatesville WMA.
(a) The crossbow season shall be open under statewide deer requirements except a person shall not take an antlerless deer with a firearm during the modern firearm deer season.
(b) The youth firearm season shall be open under statewide deer requirements.
(41) [459] Yellowbank WMA.
(a) The quota hunt shall be for two (2) consecutive days beginning the first Saturday in November. There shall be no more than two (2) hunters for each mentor and no more than one (1) mentor for each youth. Mentors shall not take antlered deer. Youths may take any deer.
(b) A deer hunter shall not take an antlered deer whose antlers have an outside spread of less than fifteen (15) inches.
(42) [441] Zielp Campground.
(a) The quota hunt shall be for any deer on the second Saturday in December for persons with a disability which impairs their mobility as defined in 301 KAR 3.026.
(b) The area shall be closed to the statewide archery season.

MARK S. CRAMER, Deputy Commissioner
For C. Thomas Bennett, Commissioner
W. JAMES HOST, Secretary
APPROVED BY AGENCY: March 14, 2005
FILED WITH LRC: March 15, 2005 at 10 a.m.
CONTACT PERSON: Dan Figert, Fish & Wildlife Program Manager, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, June 14, 2005)

401 KAR 50:045. Performance tests.

RELATES TO KRS 224.10-100(5), (22), (23), (39); 224.20-110(1) [Chapter 234]

STATUTORY AUTHORITY: KRS 224.10-100(5), (22), (23), (39)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the [Natural Resources and] Environmental and Public Protection Cabinet to provide [promulgate] [prescribed] administrative regulations for the prevention, abatement, and control of air pollution, and KRS 224.10-100(3) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes requirements for performance tests.

Section 1. The cabinet may require the owner or operator of any [any] affected facility to sample emissions in accordance with methods approved by the cabinet or the U.S. EPA [such methods as the cabinet shall prescribe]. All tests shall be made under the direction of persons qualified by training [and/or] experience in the field of air pollution control.

Section 2. Pretest Requirements. (1) A source required to conduct a performance test shall submit a completed Compliance Test Protocol form, DFP form 5028, or a test protocol a source has developed for submission to other regulatory agencies, in a format approved by the cabinet, to the cabinet's Division for Air Quality a minimum of sixty (60) days prior to the scheduled test date.
(2) The cabinet shall [will] review the Compliance Test Protocol submitted for approvability and determine the need for a pretest meeting with the source.
(3) If a pretest meeting is held:
   (a) The source shall resolve with the division all testing and process issues; and [1]
   (b) The division's approval shall [will] be in writing and sent to the source.
(4) The source shall not deviate from the approved test protocol without the division's prior approval.

Section 3. The cabinet may conduct tests of emissions of air contaminants from any source.

Section 4. 3 Test Methods and Exceptions. (1) Performance tests required by this or [hereunder or by] any other administrative regulation at 401 KAR Chapters 60-68 [of the Division for Air Quality] for affected facilities that [which] are subject to a standard of performance promulgated under 40 C.F.R. 60 or 40 C.F.R. 61, incorporated [filed] by reference in 401 KAR 57:002 and 60:005 [60:016], shall be conducted, and data shall be reduced, in accordance with the reference methods and procedures contained in each applicable administrative regulation unless:
(a) The cabinet specifies or approves the use of a reference
method with minor changes in methodology;
(b) The cabinet and the U.S. EPA approve the use of an equivalent method;
(c) The cabinet and the U.S. EPA approve the use of an alternative method, the results of which they have [haven] determined to be adequate for indicating whether a specific source is in compliance;
(d) The cabinet and the U.S. EPA waive the requirement for performance tests [test] for affected facilities for which a standard of performance has been promulgated under 40 C.F.R. 60 or 40 C.F.R. 61 because the owner or operator of an [affected] affected facility has demonstrated to the cabinet's and the U.S. EPA's satisfaction that the affected facility is in compliance with the applicable standard.
(2) Performance tests required by this or hereunder or by any other administrative regulation in 401 KAR Chapters 50-68 [of the Division-for-Air Quality] for affected facilities that are subject to a standard promulgated under 40 C.F.R. 63, incorporated by reference in 401 KAR 63-002, shall be conducted, and data shall be reduced, in accordance with the reference methods and procedures contained in 40 C.F.R. 63.7 [40 C.F.R. 63 Appendix-A] unless:
(a) The cabinet specifies or approves the use of a reference method with minor changes in methodology pursuant to 40 C.F.R. 63.90(a);
(b) The cabinet and the U.S. EPA approve the use of an equivalent method;
(c) The cabinet and the U.S. EPA approve the use of an alternative method that provides results adequate for indicating whether a specific source is in compliance;
(d) The cabinet and the U.S. EPA waive the requirement for performance test for affected facilities for which a standard has been promulgated under 40 C.F.R. 63 because the owner or operator of an affected facility has demonstrated to the cabinet's and the U.S. EPA's satisfaction that the affected facility is in compliance with the applicable standard.
(3) Performance tests required by this or hereunder or by any other administrative regulation in 401 KAR Chapters 50-68 [of the Division-for-Air Quality] for affected facilities that are not subject to a standard promulgated under 40 C.F.R. 60, 40 C.F.R. 61, or 40 C.F.R. 63 shall be conducted, and data shall be reduced, in accordance with the methods and procedures contained in each applicable administrative regulation unless:
(a) The cabinet specifies or approves minor changes in methodology;
(b) The cabinet specifies or approves the use of an alternative method that provides results adequate for indicating whether a specific source is in compliance;
(c) The cabinet waives the requirement for performance tests because the owner or operator of the affected facility has demonstrated to the cabinet's satisfaction that:
  1. The affected facility is in compliance with the applicable standard;
  2. In the case of an existing affected facility, the test cannot be performed by a source due to physical plant limitations or extreme economic burden:
    a. The cabinet shall determine the validity of an economic burden waiver request [by] based on proof presented by the affected facility; and
    b. The determination of an economic burden shall be made on the basis of whether meeting the compliance standards would produce serious hardship without equal or greater benefit to the public and environment.
Section 5. Test Conditions. (1) In order to demonstrate that a source is capable of complying with a standard at all times, a performance test shall be conducted under normal conditions that are representative of the source's operations and create the highest rate of emissions. The Division for Air Quality may waive this requirement on a case-by-case basis if the source demonstrates to the cabinet's satisfaction that the source is in compliance with all applicable requirements.
(2) When the maximum production rate represents a source's highest emissions rate and a performance test is conducted at less than the maximum production rate, a source shall be limited to a production rate of no greater than 110 percent of the average production rate during the performance tests.
(3) A source that becomes capable of operating at a higher production rate than the production rate demonstrated during a prior performance test shall conduct another performance test at the higher rate to demonstrate the source's ability to comply with emissions limitations. [Performance tests required hereunder or by any other administrative regulation of the Division-for-Air Quality for affected facilities which are not subject to a standard of performance promulgated under 40 C.F.R. 60 or 40 C.F.R. 61 shall be conducted, and data shall be reduced, in accordance with the methods and procedures contained in each applicable administrative regulation unless:
(a) The cabinet specifies or approves minor changes in methodology;
(b) The cabinet specifies or approves the use of some other method the results of which it has determined to be adequate for indicating whether a specific source is in compliance;
(c) The cabinet waives the requirement for performance tests because the owner or operator of the affected facility has demonstrated to the cabinet's satisfaction that:
  1. The affected facility is in compliance with the applicable standard;
  2. In the case of an existing affected facility, the test cannot be performed by a source due to physical plant limitations or extreme economic burden. The burden of proof for an alleged "economic burden" is to be borne by the source.]
Section 6. The owner or operator shall:
(1) Permit the cabinet to conduct performance tests at a reasonable time;
(2) Operate the facility, for the purpose of the performance tests, under conditions specified by the cabinet based on representative performance for the affected facility;
(3) Provide the cabinet with records necessary to determine representative performance. [The owner or operator shall permit the cabinet to conduct performance tests at any reasonable time, shall cause the affected facility to be operated for purposes of such tests under such conditions as the cabinet may specify based on representative performance of the affected facility, and shall make available to the cabinet such records as may be necessary to determine such performance.]
Section 7. [1] 6. The owner or operator of an affected facility subject to 40 C.F.R. Part 60 or 40 C.F.R. Part 61 testing requirements shall provide the cabinet thirty (30) calendar days [ten (10)-working days] prior notice of the test results in order to afford the cabinet the opportunity to have an observer present.
(2) The owner or operator of an affected facility subject to 40 C.F.R. Part 63 testing requirements shall provide the cabinet sixty (60) calendar days prior notice of the performance test.
(3) If [Should a facility be] unable to conduct a performance test as scheduled, the owner or operator shall notify the cabinet as soon as practicable to reschedule the test. A delay in conducting a performance test shall [does] not relieve an owner or operator of a facility from any legal responsibility for demonstrating compliance.
Section 8. [6.] The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:
(1) Sampling ports adequate for test methods applicable to such facility;
(2) Safe sampling platforms [platforms];
(3) Safe access to sampling platforms; and [platforms];
(4) Utilities for sampling and testing equipment.
Section 9. Sampling Runs. [1] 7. Each performance test shall consist of three (3) separate runs using the applicable test method. Each run shall be conducted for such time and under such conditions specified in the applicable administrative regulation. For the purpose of determining compliance with an applicable standard, the arithmetic mean of the results of the three (3) runs shall apply.
(2)(a) Once performance testing has begun, a person conducting the testing shall not halt a sampling run except due to:

1. Forced shutdown;
2. Failure of an irreplaceable portion of the sample train;
3. Extreme meteorological conditions; or
4. Unforeseen circumstances beyond the owner's or operator's control.

(b) Forced-shutdown failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or unforeseen circumstances beyond the owner's or operator's control. The person conducting the testing shall not halt a sampling run for the purpose of making adjustments to the parameters of the performance test.

(3) If in the event that a sample is accidentally lost or conditions occur in which one (1) of the three (3) runs must be discontinued for a purpose in accordance with subsection (2)(a) of this section because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or unforeseen circumstances beyond the owner's or operator's control, compliance may, upon the cabinet's approval, be determined using the arithmetic mean of the results of the two (2) other runs.


(2) This material [document] may be inspected, copied, or cited, subject to applicable copyright laws, at the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [In the event that a sample is accidentally lost or conditions occur in which one (1) of the three (3) runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or unforeseen circumstances beyond the owner's or operator's control, compliance may, upon the cabinet's approval, be determined using the arithmetic mean of the results of the two (2) other runs.]

LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: May 13, 2005
FILED WITH LRC: May 13, 2005 at 11 a.m.
CONTACT PERSON: Carl Millan, Environmental Technology III, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3282, fax (502) 573-3787, email Carl.Millan@ky.gov

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, June 14, 2005)

401 KAR 63:005. Open burning.

RELATES TO: KRS 149.400, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7407-7477

STATUTORY AUTHORITY: KRS [149.400.], 224.10-100, 224.20-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.400 prohibits setting fires within 150 feet of woodland or brushland during fire-hazard seasons except under certain prescribed conditions. KRS 224.10-100 requires the [Natural Resources and Environmental and Public Protection Cabinet to promulgate (prescribe)] administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-110 [460] prohibits any person from directly or indirectly, emitting or discharging into the air under the jurisdiction of the commonwealth, or causing, permitting, or allowing to be emitted or discharged into the [ambient air] any contaminants as provided for in subsection (1)(a) of KRS 224.01-10 that shall cause or contribute to the pollution of the air of the commonwealth in combination with any of the ambient, administrative regulations, or orders of the cabinet. This administrative regulation establishes requirements [provides] for the control of open burning.

Section 1. Definitions. [Terms not defined in this section shall have the meaning given them in 401 KAR 63:001]

(1) "Clean lumber" means wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products and does not include commercial or industrial waste or wood products that have been painted, pigmented-stained, or pressure-treated using any hazardous or toxic [volatile compounds such as chromate, copper, arsenate, pentachlorophenol, and creosote]

(2) "Fire training" means the instruction of industrial, public, and private firefighters conducted in accordance with safety standards and procedures as approved by the Kentucky State Fire Marshal, the Kentucky Fire Commission or the National Wildfire Coordinating Group.

(3) "Garbage" means putrescible animal and vegetable matter accumulated [by a family in a residence] in the course of ordinary day-to-day living.

(4) ["Household rubbish" means waste material and trash, not to include garbage,] normally accumulated by a family in a residence in the course of ordinary day-to-day living except for [not to include garbage, cans, glass, plastic, or other potentially hazardous waste materials]

(5) "Land clearing" means clearing of land for agricultural, residential, industrial, or commercial development purposes, including the construction of roads.

(6) ["Open burning" means the burning of any matter without a [Continued]

(7) ["Priority I Region" means a region classified as Priority I in 401 KAR 50:020, Appendix A.

(8) "Recognized agricultural, silvicultural, range, ecological, or wildlife management practices" means burning recognized by the Kentucky Department of Agriculture, the United States Department of Agriculture, the Kentucky Division of Forestry, the United States Forest Service, the Kentucky Department of Fish and Wildlife, the Kentucky State Nature Preserve Commission, or the United States Fish and Wildlife Service as necessary to promote cultivation of crops, range, and forest lands, weed and understory abatement and pest control and prevention.

(9) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), felled trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings and shavings. Wood waste does not include:

(a) Yard waste;
(b) Construction, renovation, or demolition wastes; or
(c) Clean lumber.

(10) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs, which come from residential, commercial, retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include:

(a) Construction, renovation, and demolition wastes; or
(b) Clean lumber.

Section 2. Applicability. This administrative regulation shall apply to all open burning that is not subject to another administrative regulation in 401 KAR Chapters 50 to [through] 65.

Section 3. Prohibition of Open Burning. Except as provided in Sections 4 and 5 of this administrative regulation, open burning shall be [is] prohibited.

Section 4. Allowable Open Burning. Subject to the limitations contained in this section and the restrictions contained in Section 5 of this administrative regulation, open burning shall be allowed for:

(1) Fires set for the cooking of food for human consumption;
(2) Fires set for recreational or ceremonial purposes;
(3) Small fires set by construction and other workers for comfort, heating purposes if:
(a) The ambient temperature is below fifty (50) degrees Fahrenheit;
(b) Excessive or unusual smoke is not created;
Only clean lumber or vegetative matter is burned; and
(a) The fire is burned in a container not exceeding fifty-five (55) gallons in size;
(b) Fires set for the purpose of weed abatement, disease, and pest prevention;
(c) Fires set for prevention of a fire hazard, including the disposal of dangerous materials if no safe alternative is available;
(d) Fires set for the purpose of instruction and training of public and industrial employees in the methods of fighting fires as set forth in Section 6 of this administrative regulation;
(e) Fires set for recontoured agricultural, silvicultural, range, ecological, and wildlife management practices;
(f) Fires set by individual homeowners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;
(g) Fires for disposal of household rubbish, which shall not include garbage, paring at dwellings of five (5) family units or less; if the fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;
(h) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
(i) Fires set for the purpose of disposing of natural growth for land clearing and maintenance, and trees and tree limbs felled by storms; if no extraneous materials, such as trash or heavy of which tend to produce dense smoke, are used to cause ignition or air combustion and the burning done days when conditions do not pose a threat of starting a forest fire. In regions classified Priority I, with respect to the past four years, pursuant to 401 KAR 50 020, Appendix A, the emissions from these (such) fires shall be not equal to or greater than forty (40) percent opacity;
(j) Heating ropes that are set on fire to repair steel rails during cold weather; and
(k) Fires set by county or municipal governments to dispose of wood waste or clean lumber.

Section 5.1.3 Restrictions to Open Burning (1) For those counties, or portions of counties, which are, or were previously, designated moderate nonattainment for the one (1) hour ozone or nonattainment for the National Ambient Air Quality Standards [NAQS] PM2.5 [standards] or those counties, or portions of counties, or areas designated moderate nonattainment for the one (1) hour ozone or PM2.5, national ambient air quality standards, pursuant to 401 KAR 51 010, fires may be set in accordance with this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed shall be tied to:
(a) Fires set for the cooking of food for human consumption;
(b) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;
(c) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
(d) Fires set for recognized agricultural, silvicultural, range, ecological, and wildlife management practices;
(e) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning; and
(f) Fires set for recreational or ceremonial purposes.
(2) Open burning shall comply with the fire hazard season requirements of KRS 149.400, in accordance with KRS Chapter 149.400. During the period, commencing February 15 through April 30 and October 1 through December 15 each year, open burning shall not be conducted closer than 150 feet of any woodland or brushland between the hours of 6 a.m. and 6 p.m. except when the ground is covered with snow. These restrictions do not apply to fires set for the purpose of burning plant beds, fires set in conjunction with the construction, operation, or maintenance of railroads, pipelines, power lines, or other projects in the public interest; or fires set by a state government agency, or a nonprofit governmental organization authorized by the Kentucky Department of Forestry, for wildlife or plant habitat improvement, ecological site restoration, site preparation for natural or artificial regeneration, or fuel reduction.
(3) Open burning for land clearing purposes associated with residential, commercial, or industrial development shall be limited to a maximum of two (2) contiguous acres at any one (1) time.
(4) The administrative regulation shall [does] not authorize open burning that is prohibited by [Open burning shall not be conducted in or on] any local ordinance.

Section 6.1.5 Procedures for Fire Training Burning conducted in conjunction with training for public, private and industrial firefighters shall be [is] subject to the following criteria:
(1) All fire training shall be conducted in accordance with safety standards and procedures as accepted by the Kentucky State Fire Marshal, the Kentucky State Fire Commission or the National Wildfire Coordinating Group.
(2) [Excluding fire training that has been approved by the Kentucky State Fire Marshal, or which has been certified (as a fire service training center), or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(3) [No any materials to commonly known to contain asbestos shall be burned unless the entity conducting the fire training can demonstrate that the materials do not contain asbestos.]
(3) [Any materials to which are known to contain asbestos shall not be burned unless the entity conducting the fire training can demonstrate that the materials do not contain asbestos.]
(4) [Materials likely to produce hazardous or toxic emissions shall be removed prior to the fire training burning event, to the extent practicable, and properly disposed.]
(4) [Materials likely to produce hazardous or toxic emissions shall be removed prior to the fire training burning event, to the extent practicable, and properly disposed.]
(5) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(5) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(6) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(6) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(7) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(8) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(9) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]
(10) [Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified (as a fire service training center) by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, and for which the training center has submitted written notification to the local division for Air Quality regional office in a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinators, the number of firefighters to be trained, the goals and objectives of the training, and a brief summary of what is to be taught. No fire training shall take place without the Division for Air Quality's written approval.]

- 64 -
posal of dangerous materials if no safe alternative is available;
(5) Fires set for the purpose of bona fide instruction and training of public workers and industrial employees in the methods of fighting fires;
(6) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;
(7) Fires set by individual home-owners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;
(8) Fires for disposal of household rubbish, not to include garbage, originating at dwellings of five (5) family units or less, if the fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;
(9) Fires for the purpose of disposing of accidental spills or leaks of crude oil, gasoline, petroleum products, or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
(10) Fires for the disposal of natural growth for land clearing, and tree and tree limbs felled by storms, if no extraneous materials such as tires or heavy oil which tend to produce dense smoke are used to cause ignition or aid combustion and the burning is done on days and conditions do not pose a threat of ignition of a forest fire. In regions classified as Priority I with respect to particulate matter pursuant to KRS 401-KAR 50.020, Appendix A, the emissions from such fires shall not be equal to or greater than forty (40) percent opacity.
(11) Heating ropes that are set on fire to repair steel rails during cold weather.

Section 4. Additional Restrictions for Ozone-Nonattainment Areas and Areas Previously Designated Non-attainment for Ozone. For those areas which are, or were previously, designated moderate non-attainment for ozone pursuant to 401-KAR 64-010, fires may be set according to the provisions of Section 2 of this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed are:
(1) Fires set for the cooking of food for human consumption;
(2) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;
(3) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
(4) Fires set for recognized agricultural, silvicultural, range, and wildlife management practices;
(5) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, gasoline, petroleum products, or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
(6) Fires set for recreational or ceremonial purposes.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(Amended at ARRS, June 14, 2005)

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presence evaluations and treatment of sex offenders.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(1), 17.554
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.5541 requires [authorizes] the Sex Offender Risk Assessment Advisory Board to approve providers to conduct [promulgate administrative regulations to establish standards for mental health professionals providing] court-ordered comprehensive sex offender presence evaluations and treatment of sex offenders. This administrative regulation establishes approval requirements for providers to assure the quality of court-ordered comprehensive sex offender presence evaluations and treatment of sex offenders.

Section 1. Definitions. (1) "Approved provider" is defined by KRS 17.555(3)
(2) "Board" is defined by KRS 17.550(1).
(3) "Comprehensive sex offender presence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the [four (4)] factors listed in KRS 17.554(2).
(4) "Corrective action plan" means a plan submitted by the approved provider and accepted or imposed by the board that requires an approved provider to take specific steps to be in compliance with this administrative regulation.
(5) "Sex crime" is defined by KRS 17.500(9) [44].
(6) "Sex offender" is defined by KRS 17.550(2).
(7) "Victim" is defined by KRS 421.500(1)

Section 2. Qualifications of Approved Providers. To qualify as an approved provider, an applicant shall, in addition to meeting the requirements of KRS 17.550(3):
(1) Have completed forty (40) hours of specialty training provided or approved by the board under Section 8 of this administrative regulation including the following:
(a) Characteristics and offense patterns of sex offenders;
b) Treatment modalities used with sex offenders;
c) Legal and ethical issues in the risk assessment of sex offenders;
d) Victim's issues, not to exceed two (2) hours of credit against the total requirement;
e) Issues related to the assessment of juvenile and female sex offenders; and
(f) Use of the appropriate actuarial or evaluation instruments;
(2) Be in compliance with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and
(3) Have a minimum of 250 hours documented experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
(a) Sixty (60) hours documented experience conducting sex offender evaluations or complete a practicum as described in Section 6 of this administrative regulation; and
(b) 190 hours documented clinical contact conducting sex offender treatment or complete a practicum as described in Section 6 of this administrative regulation.

Section 3. Duties. (1) If an approved provider performs a comprehensive sex offender presence evaluation for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.
(2) If an approved provider has provided treatment for a sex offender, he shall not perform a comprehensive sex offender presence evaluation for personal financial gain for the sex offender for six (6) months following the treatment.
(3) An approved provider shall:
(a) Submit the first four (4) evaluations prepared after becoming an approved provider for review by the board;
(b) Comply with the ethical standards of professional practice as promulgated by the Kentucky licensing or certifying body under which he has professional status; and
(c) Complete eight (8) hours of continuing education approved or provided by the board by December 31 in each calendar year following the year in which the individual becomes [after becoming] an approved provider.

1. The board may grant an extension of six (6) months in
Section 4. Approval Procedures. (1) The board shall approve an applicant as an approved provider if he meets the applicable qualifications specified in Section 2 of this administrative regulation and is not otherwise disqualified by the provisions of Section 5 of this administrative regulation.

(2) An individual may apply to the board for approval status as an approved provider by submitting:

(a) A written request for approval, which shall include the following:

1. Full name;
2. Business address;
3. Home address;
4. Daytime telephone number;
5. Fax number, if available; and
6. Social Security number;
(b) Documentary evidence of his qualifications; and
(c) Evidence that he has remedied the cause for the denial or revocation, if approval is denied or revoked under Section 5 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:

(a) The documentation of qualifications is insufficient to meet the required qualifications in Section 2 of this administrative regulation;
(b) The board is unable to verify the authenticity of the documentation of qualifications; or
(c) Any of the information required in subsection (2) of this section is not submitted.

(4) If the board determines that an application is incomplete, the board shall specify to the applicant additional documentation or information that is required or identify the information that cannot be verified.

(5) The board shall notify the applicant of its intent to approve or deny the application for approval in writing no later than ninety (90) days after receiving a complete application for approval.

(6) Unless approval has been revoked in accordance with Section 5 of this administrative regulation, the board shall renew the approval status of an approved provider upon request if:

(a) He submits documentation of completion of at least eight (8) hours per year of continuing education provided or approved by the board under Section 8 of this administrative regulation; and
(b) The approved provider continues to meet the requirements of this administrative regulation and KRS Chapter 17 for approved provider status.

(7) The board shall maintain a list of approved providers to be submitted to the Administrative Office of the Courts annually.

Section 5. Denial or Revocation of Approval. (1) The board shall deny, suspend or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or plead guilty to a felony criminal offense or a misdemeanor offense against a person;
(b) Had a domestic violence protective order issued against him within the previous five (5) years;
(c) Failed to meet the qualifications for approval set forth in Section 2 of this administrative regulation;
(d) Failed to be in compliance with the ethical standards of professional practice as promulgated by the Kentucky Licensing or certifying body under which he has professional status;
(e) A sale or drug abuse problem as defined in KRS 222.005(3) (42);
(f) Failed any information or documentation, or has concealed a material fact, in his request for approval;
(g) Failed to implement a corrective action plan imposed by the board in accordance with Section 7 of this administrative regulation;
(h) Three (3) or more evaluations which the board finds are below standard upon review;
(i) Failed to comply with the comprehensive sex offender presentence evaluation procedure established in 501 KAR 6:200;
(j) Showed an inability to adequately conduct an evaluation with reasonable skill;
(k) Accepted a gift or favor from a sex offender being assessed, from the family of the sex offender being assessed, or from their agent; or
(l) Provided a gift or favor to a sex offender being assessed, to the family of the sex offender being assessed, or to their agent.

(2) The board may deny, suspend or revoke approval if an applicant or an approved provider has:

(a) Been convicted of or pleaded guilty to any misdemeanor criminal offense that is not against a person;
(b) Had a sanction applied against his mental health professional licensure or certification at any time in the past two (2) years;
(c) Failed to comply with the duties set forth in Section 3 of this administrative regulation;
(d) Less than three (3) evaluations that the board finds are below standard upon review; or
(e) Failed to comply with the treatment requirements established in 501 KAR 6:220;
(f) Failed to comply with the evaluation procedure established in 501 KAR 6:200; or
(g) Failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 2(4)(c) of this administrative regulation.

(3) If the board intends to deny, suspend or revoke approval, it shall:

(a) Serve a notice of intent to deny, suspend, or revoke approval to the applicant or approved provider; and
(b) Notify the applicant or approved provider of his hearing rights, in accordance with KRS 17.560.

(4) An approved provider who has had his approval revoked shall be ineligible to apply to be an approved provider until the second anniversary of the date his approval was revoked unless his revocation was for failure to obtain the required eight (8) hours of continuing education and the required hours have been obtained.

Section 6. Practicum Requirements. (1) A practicum required by Section 2 of this administrative regulation shall be conducted by an approved provider who shall:

(a) Have a minimum of 2000 hours of experience conducting sex offender evaluations and clinical contact in sex offender treatment, including a minimum of:
1. 500 hours conducting sex offender evaluations; and
2. 1500 hours of clinical contact in sex offender treatment;
(b) Be an approved provider in good standing with the board; and
(c) Submit a request to conduct a practicum for each participant and be approved by the board to conduct the practicum;
(d) Directly observe the practicum participant’s clinical practice in person or through video or audio tape;
(e) Examine and approve all comprehensive sex offender pre-sentence evaluations performed by the practicum participant;
(f) Give written notice to the board if he determines that the practicum participant’s performance does not comply with the provisions of this administrative regulation, 501 KAR 6:200, or 501 KAR 6:220.
(2) To complete a practicum required by this administrative regulation, the participant shall:
(a) Have a minimum of four (4) hours of face-to-face contact with the approved provider conducting the practicum each month, which shall include case discussion, review of reading assignments, skill building, and review of audio or video tape of actual clinical practice;
(b) Obtain a minimum of sixty (60) hours experience conducting sex offender evaluations;
(c) Obtain a minimum of 190 hours of clinical experience with face-to-face contact conducting sex offender treatment;
(d) Participate in the practicum for a minimum of six (6) months; and
(e) Meet the requirements of the practicum within a maximum of eighteen (18) months.
(3) If an applicant has a portion of the minimum hours required to qualify as an approved provider in Section 2(3) of this administrative regulation, he shall participate in the practicum as described in sub-section (1) and (2) of this section and may obtain only the hours needed to meet the minimum qualifications in Section 2(3) of this administrative regulation.

Section 7. Monitoring. (1) The board may:
(a) Investigate a formal complaint, verified by affidavit, concerning an approved provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation;
(b) Refer a complaint against an approved provider, which relates to an unethical practice or practice which may be outside the approved provider’s scope of practice, to the appropriate Kentucky licensure or certification board.
(2) The board may investigate and evaluate an approved provider’s adherence to the provisions of this administrative regulation, 501 KAR 6:200, or 502 KAR 6:220, on its own initiative.
(3) Board staff may monitor by the following activities:
(a) Interviewing a sex offender or victim, if consent is given by the sex offender or victim for the interview;
(b) Reviewing evaluation or treatment records maintained by an approved provider on a sex offender;
(c) Direct observation of the evaluation or treatment of a sex offender;
(d) Interviewing judicial, correctional, law enforcement officials or other agency personnel that interact with an approved provider in relation to comprehensive sex offender presentence evaluations or treatment of sex offenders.

(4) If an approved provider fails to comply with provisions of this administrative regulation, the board shall notify him in writing of its determination and may:
(a) Require the approved provider to submit a corrective action plan for approval by the board;
(b) Impose a corrective action plan; or
(c) Revoke approval in accordance with Section 5 of this administrative regulation.
(5) If the board requires an approved provider to comply with a corrective action plan, it shall review plan compliance within ninety (90) days.

Section 8. Approval of Specialty Training and Continuing Education. (1) Specialty training.
(a) Specialty training, as required in Section 2 of this administrative regulation, shall be approved or provided by the board based on its nature or relevance;
(b) An applicant [approved provider] seeking approval of a specialty training course shall submit to the board the following:
1. A certificate of attendance which shall include the number of hours of training received; and
2. An agenda from the training seminar that describes topics and length of time spent on each topic.
(2) The board may require the applicant to provide course materials from the training seminar or additional information, if it is unable to adequately determine the nature or relevance of the training provided at the seminar from the materials submitted under subsection (1)(b) of this section.

(2) Continuing education.
(a) Continuing education, as required in Section 3(2)(c) of this administrative regulation, shall be approved or provided by the board based on its nature or relevance.
(b) An approved provider seeking approval of continuing education hours shall submit to the board the following:
1. A certificate of attendance that shall include the number of hours of education received; and 1
2. An agenda from the seminar, which describes topics and length of time spent on each topic.
(c) The board may require the applicant to provide course materials from the seminar or additional information, if it is unable to adequately determine the nature or relevance of training provided at the seminar from the materials submitted under subsection (2)(b) of this section.

KATHI PETERSON, Psy.D., Chairperson
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(As Amended at ARRS, June 14, 2005)

501 KAR 6:220. Treatment for sex offenders.

RELATES TO: KRS 17.550-17.991
STATUTORY AUTHORITY: KRS 17.564
NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.564 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish the minimum requirements for treatment of sex offenders. [KRS 17.564(2) requires the board to develop a risk assessment procedure that shall be used by certified providers in assessing the risk of an offender recommitting a sex crime, and the threat to public safety.] This administrative regulation establishes minimum treatment requirements for providers.

Section 1. Definitions. (1) "Approved provider" is defined in KRS 17.550(3).
(2) "Board" is defined in KRS 17.550(1).
(3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.
(4) "Treatment services" is defined in KRS 197.420(2)(b).

Section 2. Procedures for Treatment of Sex Offenders. (1) Treatment shall conform to community standards of care, and shall include:
(a) A diagnosis; and
(b) A written treatment plan, which shall include:
1. Goals and objectives; and
2. Modalities of treatment and the rationale therefor.
(2) Treatment shall be conducted in a psychotherapy format.
(3) Treatment may utilize psychoeducational components if [where] indicated.
(4) Prior to providing treatment, an approved provider shall:
(a) Submit a general treatment curriculum to the board that shall include the required elements in subsection 5(b) of this section; thereafter, proposed changes in the general treatment curriculum shall be submitted to the board for prior approval;
(b) Obtain written informed consent for treatment from the offender;
(c) Contact the offender's supervising probation and parole officer to discuss the offender and obtain offender information; and
(d) Make a good faith effort to obtain the offender's mental health records.

(5) An approved provider shall:
(a) Provide psychological or pharmaco-therapy services or testing as needed or make the appropriate referral and act as liaison for the provision of services;
(b) Utilize a treatment curriculum which, at a minimum, shall include:
1. Treatment services as may be necessary to meet the needs of the individual offender;
2. An emphasis on acceptance of responsibility by the offender for present and past sexual offending behavior;
3. Gender and culture specific programming; and
4. Education of the offender in:
   a. The cycle of sexual abuse;
   b. Human sexuality;
   c. Deviant arousal and its reduction;
   d. Cognitive restructuring;
   e. Relapse prevention;
   f. Partner and family interactions and support, if applicable;
   g. Victim empathy awareness; and
   h. Relationship skills.
(c) Provide treatment consistent with current professional literature which minimizes the risk of reoffending and emphasizes community safety;
(d) Provide eighty (80) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for a minimum of twenty-four (24) months with at least forty (40) face-to-face sessions conducted during the first twelve (12) months;
(e) Maintain an individual record which shall include documentation of the offender's attendence and evaluative progress notes;
(f) Obtain a release of information signed by the sex offender which allows the approved provider to release information to probation and parole personnel responsible for the sex offender's supervision and the Sex Offender Risk Assessment Advisory Board;
(g) Notify the offender's supervising probation and parole officer in writing if when the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;
(h) Provide the Required Monthly Progress Report to the supervisor of probation and parole officer each month;
(i) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider's treatment; and
j) (i) Prepare a treatment summary at discharge from treatment; and
(j) Provide written notice of the sex-offender's discharge from treatment and the reason for discharge to the supervising probation and parole officer within ten (10) days of discharge.

Section 3. Incorporation by Reference. (1) The Sex Offender Risk Assessment Advisory Board from "Required Monthly Progress Report", 4/12/05 is incorporated by reference.
(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Justice and Public Safety Cabinet, Department of Corrections, Office of Legal Services, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40620-2400, (502) 564-2024, fax (502) 554-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

KATHI PETERSON, Psy.D., Chairperson
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.
CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, June 14, 2005)

503 KAR 1:110. Department of Criminal Justice Training
basic training; graduation requirements; records.

RELATES TO: KRS 15.330(1)(c), (f), 15.336(1), 15.404(1),
15.440(1)(d)

STATUTORY AUTHORITY: KRS 15.330(1)(c), (f), (h)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(f) and (h) authorize the Kentucky Law Enforcement Council to approve law enforcement officers as having met the requirements for completion of law enforcement training and to promulgate administrative regulations to implement that requirement. This administrative regulation establishes requirements for graduation from the Department of Criminal Justice Training basic training course required for peace officer certification and participation in the Kentucky Law Enforcement Foundation Program Fund, and for maintenance of basic training records.

Section 1. Basic Training Graduation Requirements. To graduate from the department's basic training course, a recruit shall:
(1) Successfully complete a minimum of 660 hours of training, based upon the curriculum approved by the council in accordance with KRS 15.330 and 503 KAR 1:090;
(2) Achieve a seventy (70) percent overall score on all graded training areas covered during the course for which a numerical score is assigned. A recruit who does not achieve a seventy (70) percent overall score shall be considered to have failed basic training;
(3) Pass all training areas covered during the course for which a pass or fail designation is assigned. A recruit who does not pass all pass or fail training areas shall be considered to have failed basic training; and
(4) Successfully complete all other assignments, exercises, and projects included in the course. After-hours assignments may be required, and shall be successfully completed in order to pass the training area for which they were assigned.

Section 2. Physical Training Requirements. A recruit who is required to complete basic training in order to fulfill the peace officer certification provisions established in KRS 15.380 to 15.404 shall meet the physical training entry and graduation requirements established in this section.
(1) Physical training entry requirements.
(a) Within five (5) days from the first day of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:
   1. One (1) repetition maximum (RM) bench press equal to sixty-four (64) percent of the recruit's body weight;
   2. Eighteen (18) sit-ups in one (1) minute;
   3. 300 meter run in sixty-five (65) seconds;
   4. Twenty (20) pushups; and
   5. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds.
(b) If a recruit passes all events when participating in the physical training entry test, he shall have met the physical training entry requirements.
(c) Retest. If a recruit fails to pass all events when participating in the physical training entry test:
   1. He shall retest in the failed events no earlier than forty-eight (48) hours from the date of the entry test;
   2. All failed events shall be retested on the same date;
   3. If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training entry requirements; and
   4. If the recruit does not pass all previously failed events on the date of the retest, he shall be unqualified to participate in the department’s basic training course for which he is currently enrolled, and may reapply to participate in a future department basic training course. The recruit shall receive no credit for the part of the basic training course which he has completed.
VOLUME 32, NUMBER 1 – JULY 1, 2005

(2) Physical training graduation requirements.
(a) Within five (5) days from the final date of the basic training course, the recruit shall successfully complete each of the following events as instructed and evaluated by qualified department instructors:
1. One (1) repetition maximum (RM) bench press equal to seventy-three (73) percent of the recruit’s body weight;
2. Eighteen (18) sit ups in one (1) minute;
3. 300 meter run in sixty-five (65) seconds;
4. Twenty-five (25) push ups; and
5. One and five-tenths (1.5) mile run in sixteen (16) minutes fifteen (15) seconds.
(b) If a recruit passes all events when participating in the physical training graduation test, he shall have met the physical training graduation requirements.
(c) Retest. If a recruit fails to pass all events when participating in the physical training graduation test:
1. He shall retest in the failed events no earlier than forty-eight (48) hours after the date of the graduation test, but not later than the last scheduled date of the basic training course;
2. All failed events shall be retested on the same date;
3. If the recruit passes all previously failed events on the date of the retest, he shall have met the physical training graduation requirements, and
4. If the recruit does not pass all previously failed events on the date of the retest, he shall be considered to have failed basic training.
(3) Physical training safety factors.
(a) Prior to administering the outdoor events, specifically the 300 meter run and the one and five-tenths (1.5) mile run, of the physical training entry or graduation requirements, the physical training instructor shall survey weather conditions to determine whether the outdoor events can be safely performed without risk of physical injury due to:
1. Extreme cold, snow, or icy conditions,
2. Extreme heat, humidity, or a combination thereof;
3. Inclement weather including lightening, excessive wind, or rain.
(b) If the physical training instructor determines that it would be dangerous to administer the outdoor events due to the weather conditions, the time period in subsections (1)(a) and (2)(a) of this section may be extended until the events can be safely administered.
(c) During week eight (8) of basic training, the recruits shall be administered the events of the physical training requirements for purposes of reporting their progress to their respective law enforcement agencies. If weather conditions prohibit administration of the outdoor events of the physical training graduation examination prior to the last scheduled date of the basic training course, a recruit’s successful completion of the 300 meter run and the one and five-tenths (1.5) mile run during week eight (8) testing may be accepted in lieu of having to comply with the examination established in subsection (2)(a) of this section.

Section 3. Failure and Repetition of Basic Training. (1) Failure of Training.
(a) A recruit that is removed from basic training due to failure before reaching the beginning of the first week eight (8) shall:
1. Be required to repeat the entire basic training course;
2. Pay all applicable fees for the repeated basic training course in accordance with 503 KAR 3:030;
(b) If a recruit fails basic training in week eight (8) through week sixteen (16),
1. He or she shall:
   a. Be removed from the basic training class;
   b. Reeneter basic training in a subsequent class that has the first available vacancy; and
   c. Start his or her training at the beginning of the training module that the recruit was in at the time of the failure;
2. In accordance with Section 6(2) of 503 KAR 3:030, the recruit’s hiring agency shall pay the department the full tuition, room, and board costs of repeating the training module which was failed. The hiring agency may recover these costs of repeating the training module from its recruit; and
   3. If the training module is successfully completed, the recruit shall continue with the remainder of the basic training course.
   (b) A recruit that is removed from training due to failure and reenters a subsequent class shall start his or her training at the beginning of the training module that he was in at the time of the failure.
   (c) In accordance with Section 6(2) of 503 KAR 3:030, the recruit’s hiring agency shall pay the department the full tuition, room, and board costs of repeating the training module which was failed. The hiring agency may recover these costs of repeating the training module from its recruit.

Section 4. Training Modules. (1) Basic training shall be divided into nine (9) different training modules on the following subjects:
(a) Orientation to basic training;
(b) Thelt;
(c) Warrant/disorder;
(d) Traffic stops;
(e) Driving under the influence (DUI);
(f) Crimes against property;
(g) Collusion;
(h) Crimes against persons; and
(i) Graduation.
(2) If a recruit is unable to complete basic training, but legally entitled to complete the unfinished modules of the course, the recruit shall restart at the beginning of the module which he or she was in when the recruit left basic training.

Section 5. Examinations. (1) A recruit shall be examined in the following five (5) areas of basic training:
(a) Area I: Five (5) academic tests; and
(b) Area II:
1. Firearms, including:
   a. Day handgun;
   b. Night handgun; and
2. Vehicle operations, including:
   a. Precision course; and
   b. Emergency response course; and
3. Defensive tactics, which beginning with Class #324 shall include:
   a. Skills test; and
b. Pressure Point Control Tactics Management System (PPCT) written certification test; and
(c) Area III:
1. Breath test, including:
   a. Practical examination; and
2. Written examination; and
3. DUI detection, including:
   a. Practical examination; and
   b. Written examination; [ ]
(d) Area IV.
[ ] American Red Cross certification in the following:
1. [ ] Professional rescuer CPR-automated external defibrillation; and
2. [ ] First aid; and
(e) Area V: Mobile Data Terminal Certification.
2. A recruit shall be permitted one (1) reexamination in each of the five (5) [three (3)] areas of basic training.
3. A recruit who fails an examination, other than defensive tactics, shall be reexamined:
   (a) Earlier than forty-eight (48) hours from the original examination; or
   (b) Later than:
      1. Ten (10) days after the original examination. A recruit may submit a written request to the branch manager for an additional five (5) days in which to take the reexamination; and
      2. The last scheduled day of the basic training course.
(f) Failure of a defensive tactics examination:
   (a) If the failure occurs prior to the last scheduled day of defensive tactics training, the recruit shall not be reexamined earlier than the last scheduled day of defensive tactics training.
   (b) If the failure occurs on the last scheduled day of defensive tactics training, the recruit shall not be reexamined:
      1. Earlier than twenty-four (24) hours from the original examination; or
      2. Later than the last scheduled day of the basic training course.
5. A recruit shall be considered to have failed basic training if the recruit:
   (a) Fails a reexamination in accordance with subsection (2) of this section; or
   (b) Fails two (2) examinations in the same area of basic training.
Section 6. Absence. (1) A recruit may have excused absences from the course with approval of the director of the certified school or his designee.
(2) An excused absence from the course which causes a recruit to miss any of the 660 hours of basic training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of Basic Training. (1) If a recruit is prevented from completing the basic training course due to extenuating circumstances beyond the control of the recruit, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the course within 180 days immediately following the termination of the extenuating circumstance, if the:
   (a) [[4]] Extinguishing circumstance preventing completion of basic training does not last for a period of greater than one (1) year, and
   (b) [[2]] Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment while Enrolled. If, while enrolled in the basic training course, a recruit's employment as a police officer is terminated by dismissal and he is unable to complete the course, he shall complete the remaining training within one (1) year of reemployment as an officer. The recruit shall repeat basic training in its entirety if:
   (1) The break in employment exceeds one (1) year; or
   (2) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the recruit while enrolled in the basic training course.

Section 9. Maintenance of Records. (1) At the conclusion of each basic training course, the department shall, for each recruit who completes the course, complete and send the following forms to the council:
   (a) DOCJT Form 68-1 (Application for Training Credit); and
   (b) DOCJT Form 29 (Agency Training Authorization)
   (2) The department shall send a copy of the DOCJT Form 68-1 to the:
      (a) Council for verification; and
      (b) DOCJT Records Section Supervisor.
   (3) All training records required for fund purposes shall be retained by the department, but a copy of pertinent facts shall be sent to the fund administrator upon written request.
   (4) All training records shall:
      (a) Available to the council, the secretary, and the fund administrator for inspection or other appropriate purposes; and
      (b) Maintained in accordance with applicable provisions of KRS Chapter 171.

Section 10. Incorporation by Reference. (1) The following materials are incorporated by reference:
   (a) "DOCJT Form 68-1 - Application for Training Credit" (02/25/96 edition); and
   (b) "DOCJT Form 29 - Agency Training Authorization" (06/27/97 edition).
   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM F. WALSH, PH.D., CHAIR
APPROVED BY AGENCY: February 17, 2005
FILED WITH LRC: March 15, 2005 at 11 a.m.
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-3162.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Criminal Justice Training
(As Amended at ARRS, June 14, 2005)

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties.

RELATES TO: KRS 15A 070(1)
STATUTORY AUTHORITY: KRS 15A 070(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A 070(1) authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation establishes conduct requirements of recruits attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, procedures for disciplinary action, and penalties for violations of conduct requirements.

Section 1. Uniforms and Operator's License Required. A recruit shall provide the uniforms required in Section 6(3) of this administrative regulation and present a valid motor vehicle operator's license to participate in the basic training course.

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. If a recruit is not qualified to participate in the basic training course, he shall:
(a) Be removed from basic training by the:
1. Commissioner;
2. Director;  
3. Branch manager; or  
4. Section supervisor; and  
(b) Receive no credit for the part of the course he has completed.  
(2) If a recruit is removed from training, pursuant to subsection (1) of this section, within thirty (30) days of the removal, he may request in writing an administrative hearing, which shall comply with KRS Chapter 13B.  
(3) A recruit shall be considered unqualified if he:  
(a) Or his law enforcement agency files an incomplete or fraudulent application to attend basic training, or otherwise fails to comply with admissions requirements;  
(b) Is not 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 (excluded or suspended from training), or had a pending disciplinary action which was initiated during a previous DOCJT training course; or  
(e) Is unprepared to participate in training due to his arrival without the required equipment, license, uniform, or preparation;  
(4) Agency’s request: The department shall remove a recruit from basic training upon the department’s receipt of a written request from the recruit’s law enforcement agency. The recruit shall receive no credit for the part of the course he has completed.  

Section 3. Gifts. Gifts from recruits to department staff members shall conform to [with the Executive Branch Code of Ethics (KRS 11A 040)].  

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a recruit’s failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.  
(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated. The recruit shall [may] not reapply for admission to the department’s basic training course for two (2) (five (5) years from most recent date of expulsion.  
(b) Suspension. The recruit is suspended from training for a specified period of time, not to exceed one (1) year; all privileges are rescinded during the suspension period.  
(c) Probation. The recruit is placed on probation for a specified period of time, not to exceed the final date of the basic training course in which he is currently enrolled. A loss of privileges may be imposed during the period of probation. A violation of any conduct or Honor Code requirement during the period of probation shall result in an extension of the period of probation, additional loss of privileges, suspension, or expulsion.  
(d) Loss of privileges. The recruit’s privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit’s participation in training activities is not affected.  
(e) Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.  
(f) Verbal warning. The recruit is warned verbally that he has violated a conduct or Honor Code requirement.  
(2) Second and subsequent violations.  
(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.  
(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.  
(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 availability of a supervisor, or the recruit’s complaint regarding a supervisor. Penalty: verbal warning or written reprimand.  
(2) General conduct, insubordination. A recruit shall:  
(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.  
(b) Refrain from vulgarity, rudeness, violent, threatening, or offensive confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand, probation, or suspension.  
(3) General conduct, grooming. The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit’s agency and good cause shown. A recruit’s hair shall not be unkempt and shall not be over the collar. Penalty: verbal warning or written reprimand.  
(4) General conduct, alcoholic beverages and other intoxicants. No. 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 commission 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 blood alcohol concentration is 0.01% 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 has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be
impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand, probation, or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), knives other than an ordinary pocket knife, fireworks, or instruments used by law enforcement for control purposes including batons, stun guns, Mace, and pepper spray, 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 while they are not being used directly in training activities that may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning, written reprimand, loss of privileges, or probation.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not recklessly, negligently, or intentionally damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training. He shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unturned 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. 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. The recruit may wear:

1. One (1) ring per hand. A wedding and engagement ring worn together on the left hand shall be considered one (1) ring, or
2. Necklaces if worn under the tee-shirt and not visible. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Additional clothing may be worn during a training activity if authorized by the instructor.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for ten (10) minutes or more. A recruit is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence if possible. Penalty for an unexcused absence: verbal warning, written reprimand, loss of privileges, probation, or suspension; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from basic training shall be approved by the section supervisor or branch manager.

(c) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that training area.

(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A recruit shall not engage in any training activities. Penalty: verbal warning or written reprimand.

(b) A recruit shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(c) A recruit shall not engage in conduct which creates a risk of injury to others during a training session. Penalty: probation, suspension, or expulsion.

(d) A recruit shall complete assignments by the deadline established by the instructor or coordinator. Penalty: verbal warning or written reprimand.

(12) Training activities, dishonesty.

(a) A recruit shall not cheat or attempt to cheat on a test, or alter or attempt to alter a test grade or other evaluation result. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: suspension or expulsion.

(b) A recruit shall not cheat or attempt to cheat on any other assignment or activity, engage in any other conduct intended to gain an undeserved evaluation, or falsify a document provided to the department during basic training. A recruit shall not permit, assist or facilitate this conduct by another recruit. Penalty: written reprimand, loss of privileges, probation, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course, when attending in Madison County, a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times
designated by the commissioner, Sunday through Thursday evenings, and Friday or Saturday if a training session is scheduled for the following day, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning; written reprimand, loss of privileges.

(c) A recruit shall observe "lights out" by 11:30 p.m. Sunday through Thursday, and Friday or Saturday if a training session is scheduled for the following day, except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room, or visit in the room of a recruit of the opposite sex without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, probation, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, probation, suspension, or expulsion.

Section 7. Honor Code (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat 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, in cooperation with the class shall designate a minimum of one (1) Honor Code representative during the first week of basic training. The Honor Code representative may be replaced.

(a) For nonperformance of duties, including conduct violations;

(b) If the coordinator, in cooperation with the class, determines that a rotating assignment as Honor Code representative is in the best interest of the class.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative shall recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation. The department may charge a recruit with an Honor Code violation without a prior report from the Honor Code representative. A penalty recommendation for the violation shall be solicited from the Honor Code representative.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

1. Recruit performance report which shall be completed at four (4) week intervals and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social and interpersonal skills, and appearance.

2. Immediate notice of specific nonperformance or lack of progress.

3. Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at 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;

(d) Any 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 [when] a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

6. Notice if [when] a recruit has been removed from training pending an initial appearance before the commissioner as defined in Section 10 of this administrative regulation, or if [when] a recruit has been removed from training pending a disciplinary hearing as defined in Section 14(3) of this administrative regulation.

7. Immediate notice of concerns related to the recruit's safety, or physical or emotional health.

Section 9. Summary Discipline. Except for summary discipline, a penalty shall not be imposed upon a recruit unless charges have first been brought by the legal officer.

1. The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member shall have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, or written reprimand.

(c) The branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges consisting only of a change in curfew.

2. Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

3. A summary imposition 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.

- 73 -
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 receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter:
   (2) After investigating the matter, the section supervisor shall:
   (a) Take no action if none is justified by the evidence;
   (b) Impose appropriate summary discipline, or
   (c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer. Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.
   (2) The legal officer may make or cause further inquiry into the matter for additional information.
   (3) The legal officer shall:
   (a) File [such] charges against the recruit as he believes are justified by the evidence; or
   (b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.
(4) The charging document shall:
   (a) Be in writing;
   (b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;
   (c) State the time, date and place the recruit shall make an initial appearance before the commissioner to answer the charges;
   (d) Be signed by the legal officer; and
   (e) Be served upon the recruit at least forty-eight (48) hours before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than five (5) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.
   (2) At the initial appearance before the commissioner:
   (a) The legal officer shall:
      1. Read the charges to the recruit; 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
      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.
   (h) 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.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: April 14, 2005
FILED WITH LRC: April 15, 2005 at 11 a.m.
CONTACT PERSON. Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-3162.

EDUCATION CABINET
Board of Education
Department of Education
(As Amended at ARRS, June 14, 2005)

702 KAR 6:100. Appeal procedures for school and community nutrition programs.

RELATES TO: KRS 156.070(5), 156.160(1)(j), 7 C.F.R. 210.18(q), 215.11, 220.13(2)(k), 225.13, 226.6(k), 42 U.S.C. 1761, 1766(e), 1772
STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Kentucky Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. This administrative regulation establishes the appeals procedure for a sponsor of a federal nutrition program.

Section 1. Actions that [Which] May Be Appealed. (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the following adverse actions:
   (a) Denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity; or
   (b) Withholding payment arising from administrative or follow-up review activity.
   (2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, and responsible principals and responsible individuals, may appeal the following adverse actions:
      (a) Denial of a new or renewing [an] institution's application for participation;
      (b) Denial of an application submitted by a sponsoring orga-
zation on behalf of a facility or site;
(c) Notice of proposed termination of participation of [an] an
institution or facility or site;
(d) Denial of an institution's agreement,
(e) Denial of an institution's application for start-up payments;
(f) Denial of an advance payment;
(g) Denial of all or part of a claim for reimbursement except for
a late claim;
(h) Notice of proposed disqualification of a responsible princi-
pal or a responsible individual;
(i) Recovery of all or part of an advance in excess of the claim
for the applicable period;
(j) Decision by the Department of Education not to forward to
Food and Nutrition Service (FNS) an exception request by an
institution for payment of a late claim, or a request for an upward
adjustment to a claim;
(k) Demand for the remittance of an overpayment; or
(l) Any other action of the Department of Education affecting
the participation of an institution in the program or the institu-
tion’s claim for reimbursement.
(3) A program sponsor or a food service management company
(FSMC) participating in the Summer Food Service Program
for Children may appeal the following adverse actions.
(a) Denial of an application for participation;
(b) Denial of a sponsor's request for an advance payment;
(c) Denial of a sponsor’s claim for reimbursement, except for
a late claim, under 702 KAR 225.10(b); or
(d) Refusal of a state agency to forward to FNS [the Division of
School and Community Nutrition] an exception request for payment
of a late claim or a request for an upward adjustment to a claim,
(e) A claim against a sponsor for remittance of a payment
claim,
(f) Termination of the sponsor or a site;
(g) Denial of a sponsor’s application for a site; or
(h) Denial of a food service management company’s applica-
tion for a registration or the revocation of a food service manage-
ment company's registration.

Section 2. Filing An Appeal. (1) A program sponsor, re-
sponsible principal, or responsible individual aggrieved by an
adverse action of the Division of School and Community Nutri-
tion (the "division") may appeal the action by filing a timely
request for an appeal. The request shall be filed with the Di-
rector, Division of School and Community Nutrition, Depart-
ment of Education, 2545 Lawrenceburn Road, Frankfort, Ken-
tucky 40601.
(2) The request shall be in writing and clearly state:
(a) The name and address of the program sponsor;
(b) The name and title of the person who signed the re-
quest;
(c) The adverse action being appealed, the basis of the
appeal, and the relief or remedy sought;
(d) The date of the letter or other written communication
from the division notifying the program sponsor of the pro-
posed adverse action, and the name and title of the division
official who signed the letter or communication; and
(e) If a hearing before a hearing officer is desired, the de-
sire for a hearing.
(3) An appellant program sponsor may submit written
information in support of its position when it files its appeal
and request for a hearing. Except as provided in paragraph (b)
of this subsection, it may also submit additional written infor-
mation to the designated hearing officer up to thirty (30) cal-
cendar days after receipt of the division notice of adverse ac-
tion.
(4) If the appellant program sponsor is the Summer Food
Service Program, it may submit additional written information
in support of its position up to seven (7) calendar days after
filing the appeal and request for a hearing.

Section 3. Appeal Timelines. (1) The request for appeal
shall be postmarked or received by the division prior to mid-
night of the fifteenth calendar day (or tenth working day if the
Summer Food Service Program) after receipt of the notice of
adverse action. If the 15th day (or tenth working day if the
Summer Food Service Program) falls on a Saturday, Sunday,
or federal legal holiday, the request shall be timely if it is
postmarked or received the next day which is not a Saturday,
Sunday, or federal legal holiday.
(2) The division shall acknowledge receipt of the request
for an appeal within ten (10) days of its receipt of the request.
(3) Any information on which the division’s action was
based shall be available for inspection by the institution and
the responsible principal and responsible individual from the
date of receipt of the request for an appeal.

Section 4. Appeal Procedures. (1) The division shall for-
ward any request for appeal to the Director, Division of Ad-
ministrative Hearings, Office of the Attorney General. The
request for appeal shall be accompanied by a copy of the no-
tice of adverse action sent by the Division of School and
Community Nutrition.
(2) During the appeal process, a program sponsor, re-
sponsible principal, responsible Individual or food service
management company shall:
(a) Selfrepresent;
(b) Be represented by legal counsel; or
(c) Be represented by another person.
(3) The administrative hearing procedures of KRS Chapter
12B shall apply.
(4) If a hearing is requested:
(a) Except as provided in subsection (7) of this section,
the institution, the responsible principal and responsible indi-
vidual, and the Department of Education shall be provided
with at least ten (10) days advance notice of the time and
place of the hearing;
(b) If the institution’s representative or the responsible
principal and responsible individual or their representative fail
to appear at the scheduled hearing, the right to a personal
appearance before the designated hearing officer shall be
waived unless the designated hearing officer agrees to re-
schedule the hearing; and
(c) A representative of the state agency shall be allowed
to attend the hearing to respond to the testimony of the institu-
tion and the responsible principal and responsible individual
and to answer questions posed by the designated hearing
officer.
(5) The designated hearing officer shall make a determina-
tion based solely on the information provided by the state
agency, the institution and the responsible principal and re-
sponsible individual and based on federal and state laws,
administrative regulations, and policies and procedures gov-
erning the program.
(6) Except as provided in subsection (7) of this section,
within sixty (60) days of the Department of Education’s receipt
of the request for an appeal, or ten (10) days if the matter un-
der appeal is a suspension of participation, the designated
hearing officer shall inform the Department of Education, the
institute’s executive director and chairman of the board of
directors, and the responsible principal and responsible indi-
vidual of the outcome of the appeal.
(7) If the applicant is the Summer Food Service Program:
(a) The notice of the time and date of the hearing shall be
provided to at least five (5) days prior to the hearing, with the
notice sent by certified mail, return receipt requested;
(b) The hearing shall be held within fourteen (14) days of
the date of receipt of the request for an appeal and hearing,
but not before the appellant’s written documentation is re-
ceived.
(c) Within five (5) working days after the applicant’s hear-
ing, or within five (5) working days after receipt of written
documentation if no hearing is to be held, the designated
hearing officer shall make a determination based on a full
review of the administrative record, and inform the appellant
of the outcome of the appeal by certified mail, return receipt
requested; and
(d) The Department of Education’s action shall remain in
effect during the appeal process except if it is an appeal of
termination, if it is an appeal of termination:

1. Participating Summer Food Service Program sponsors and sites may continue to operate the program during the appeal, except as provided by subparagraph 3 of this paragraph.

(2) Reimbursement shall be paid for meals served during the appeal process if the appeal results in the overturning of the Department of Education's decision and

3. Continued program operation shall not be allowed if the Department of Education's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor or site has been terminated for this reason, the Department of Education shall specify this in its notice of adverse action. Pursuant to 7 C.F.R. 210.18(a)(9), 220.13(f)(2), 226.13(b)(12) and 226.6(b)(5), the decision of the hearing officer shall be the final administrative determination.

(3) If an application to participate in the program was denied, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.

(9) If all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment was denied, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

(10) If an application to participate in the program was terminated, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program. [§-Appeal Timelines (Procedures).] (4) {(c)} A program sponsor, responsible principal, or responsible individual aggrieved by a decision of the Division of School and Community Nutrition (the "division") may appeal the decision by filing a timely request for an appeal for review. The request shall be filed with the Director, Division of School and Community Nutrition, Department of Education, 2645 Lawrenceburg Road, [402-4 Capital Center Drive], Frankfort, Kentucky 40604.

[(b)] The request shall be in writing and shall state the name and address of the program sponsor and the name and title of the person who signed the request.

[(e)] The request shall be postmarked or received by the division prior to midnight of the fifteenth calendar day following the notice of adverse action. If the notice of adverse action is received on a Saturday, Sunday, or federal legal holiday, the request shall be timely filed if received by the division the next day which is not a Saturday, Sunday, or federal legal holiday.

(4) The division shall acknowledge receipt of the request for an appeal within ten (10) days of receipt of the request.

(5) Any information on which the division's action was based shall be available for inspection by the program sponsor or the responsible principal and responsible individual from the date of receipt of the request for an appeal.

[(d)] A program sponsor which has filed an appeal and request for review may examine and copy the information in the division files upon which the adverse action was based.

[(e)] During the review process, a program sponsor, responsible principal, responsible individual, or food service management company shall:

1. Self represent itself; or
2. Be represented by legal counsel.

Section 3. Filing an Appeal—(1) (c)(ii) A request for appeal shall clearly identify the adverse action being appealed, the basis of the appeal, and the relief or remedy sought. It shall also include the date of the letter or other written communication from the division notifying the program sponsor of the proposed adverse action and the name and title of the division official who signed the letter or communication. If a hearing before a hearing officer is desired, that shall be clearly stated.

(2) If the institution's representative or the responsible principal and responsible individual or their representative fail to appear at a scheduled hearing, the right to a personal appearance before the designated hearing officer shall be waived unless the designated hearing officer agrees to reschedule the hearing.

(3) A representative of the state agency shall be allowed to attend the hearing to respond to the testimony of the institution and the responsible principal and responsible individual and to answer questions posed by the designated hearing officer.

(4) If a hearing is requested, the institution, the responsible principal and responsible individual, and the Department of Education shall be provided with at least ten (10) days' advance notice of the time and place of the hearing. If the institution is a Summer Food Service Program, the notice of the time and date of the hearing shall be provided at least five (5) days prior to the hearing, with the notice sent by certified mail, return receipt requested.

[(b)] An appellant-program sponsor may submit written information in support of its position at the time it files its appeal and request for review with a hearing officer. It may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action. In the case of the Summer Food Service Program, the appellant-program sponsor may submit additional written information up to seven (7) calendar days after filing the appeal and request for review.

Section 4. Appeal Procedures—(1) (c)(i) The division shall forward any request for appeal to the Director, Division of Administration, Office of Commissioner, for the purpose of providing an opportunity for appeal. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the Division of School and Community Nutrition.

[(b)] The administrative hearing procedures of KRS Chapter 13B shall apply.

(3) The designated hearing officer shall make a determination based solely on the information provided by the state agency, the institution, the responsible principal and responsible individual and based on federal and state laws, administrative regulations, policies and procedures governing the program.

(4) Within sixty (60) days of the receipt of the request for an appeal, or ten (10) days if the matter under appeal is a suspension of participation, the designated hearing officer shall inform the Department of Education, the institution's executive director and chairman of the board of directors, the responsible principal and responsible individual of the outcome of the appeal.

(5) In the case of the Summer Food Service Program, the hearing shall be held within fourteen (14) days of the date of receipt of the request for an appeal and hearing, but not before the appellant's written documentation is received. In the case of the Summer Food Service Program, the hearing shall be held within ten (10) working days after receipt of written documentation if no hearing is being held, the designated hearing officer shall make a determination based on a full review of the administrative record, and inform the appellant of the outcome of the appeal by certified mail, return receipt requested.

(6) In the case of the Summer Food Service Program, the Department of Education's action shall remain in effect during the appeal process. However, participating Summer Food Service Program sponsors and sites may continue to operate the program during an appeal of termination, and if the appeal results in the overturning of the Department of Education's decision, reimbursement shall be paid for meals served during the appeal process.

(7) Notwithstanding subsection 6 of this section, continued program operation shall not be allowed if the Department of Education's action is based on imminent danger to the health or welfare of children. If the Summer Food Service Program sponsor or site has been terminated for this reason, the Department of Education shall specify this in its notice of adverse action. Pursuant to 7 C.F.R.—210.18(a)(9), 220.13(f)(2), 226.13(b)(12) and 226.6(b)(5), the decision of the hearing officer shall be the final administrative determination.

[(c)] In case of a denial of an application to participate in the program, the determination of the hearing officer shall, either sustain the denial or shall direct that the appellant be approved for limited or full participation.

[(d)] In case of a denial of all or part of a claim for reim-
bureament, start-up payment, advance payment, or demand for refund of any overpayment, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

(41) [(e)] In the case of the termination of an appellant's participation in the program, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.

GENE WILHOLT, Commissioner of Education
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: April 12, 2005
FILED WITH LRC: April 13, 2005 at 9 a.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

COUNCIL FOR POSTSECONDARY EDUCATION
Department for Workforce Investment
Office of Employment and Training
(As Amended at ARRS, June 14, 2005)

787 KAR 1:010. Application for employer account; reports.

RELATES TO: KRS 341.190
STATUTORY AUTHORITY: KRS 151B.020, 341.115
NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.190 requires each employing unit to keep specified work records and authorizes the secretary to require additional reports. This administrative regulation establishes the application requirements for an employer account and the requirements for other additional reports required by the division.

Section 1. Each employing unit that has met one (1) or more of the requirements for coverage set forth in KRS 341.070 [having in the state in covered employer one (1)-employee worker] shall complete and file with the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" UI-1 [(Rev.-3/03) 6/9/41] no later than the last day of the calendar quarter in which the coverage requirements is first met.

Section 2. Each employing unit shall complete and file with the Division of Unemployment Insurance the following reports as required in accordance with the instructions contained on the forms:

(1) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account [Rev.-1/93];
(2) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report [Rev.-5/99];
(3) UI-3E, "Employer's Quarterly Unemployment Wage and Tax Report (EFT version) [Rev.-5/99];
(4) UI-3A, "Request to Place Employer's Account in Inactive Status [Rev.-4/92];
(5) UI-14, "Claim for Refund of Contributions [Rev.-3/03];
(6) UI-47, "Application for Partial Payment Agreement [Rev.-4/88];
(7) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits [Rev.-6/92]; and
(8) UI-203, "Overpayment and Fraud Detection [Rev.-4/96]."

Section 3. If an employing unit elects to submit [in lieu of filing a paper report, any employing unit submits] the information required in any report listed in Section 1 or Section 2 of this administrative regulation through the Web site [via electronic means] provided [as approved] by the Division of Unemployment Insurance for that purpose, the requirement for the filing of that report shall have been satisfied.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) UI-1, "Application for Unemployment Insurance Employer Reserve Account [Rev. 3/95 (6/94)];
(b) UI-1S, "Supplemental Application for Unemployment Insurance Employer Reserve Account [Rev. 1/93];
(c) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report [Rev. 5/99];
(d) UI-3E, "Employer's Quarterly Unemployment Wage and Tax Report (EFT version) [Rev.-5/99];
(e) UI-3, "Employer's Quarterly Unemployment Wage and Tax Report (EFT version) [Rev.-5/99];
(f) UI-47, "Claim for Refund of Contributions [Rev.-8/98];
(g) UI-74, "Application for Partial Payment Agreement [Rev.-8/98];
(h) UI-203, "Overpayment and Fraud Detection [Rev.-4/96]; and
(i) UI-412A, "Notice to Employer of Claim for Unemployment Insurance Benefits [Rev.-9/92]."

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Director of Unemployment Insurance [Commissioner of Employment Services], 275 E. Main Street, Suite 202 [720], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

Dr. Penny Armstrong, Executive Director
APPROVED BY AGENCY: April 13, 2005
FILED WITH LRC: April 14, 2005 at 9 a.m.
CONTACT PERSON: Larry W. Moore, Policy Analyst, Office of Employment and Training, Division of Unemployment Insurance, 275 East Main Street 2CD, Frankfort, Kentucky 40621, phone (502) 564-2900, fax (502) 564-5502.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Building Codes Enforcement
(As Amended at ARRS, June 14, 2005)


NECESSITY, FUNCTION, AND CONFORMITY: KRS 1988.040(7) requires the Kentucky Board of Housing, Buildings and Construction to adopt and promulgate a mandatory uniform statewide building code, based on a model code, which establishes standards for construction of buildings in the state. EO-filed July 9, 2004 created the Office of Housing, Buildings and Construction which shall be headed by an executive director. This administrative regulation establishes the Kentucky Building Code's general provisions.

Section 1. Definitions. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.
(2) "Building" is defined by KRS 1988.010(4)
(3) "Commissioner" is defined by KRS 1988.010(9).
(4) "Department" is defined by KRS 1988.010(11).
(5) "Farm" means property located outside the corporate limits of a municipality on at least ten (10) acres and having a bona fide agricultural or horticultural use as defined by KRS 132.010(9) and (10) and qualified by and registered with the property valuation administrator in that county.
(6) "Fire Code Official" means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in 815 KAR Chapter 10.
(7) "Industrialized building system" or "building system" is defined in KRS 1988.010(16)
(8) "KBC" means the Kentucky Building Code as established in
VOLUME 32, NUMBER 1 — JULY 1, 2005

this administrative regulation.
(10) "Kentucky Standards of Safety" means the administrative regulations established in 815 KAR Chapter 10, which serve as the fire prevention code for existing buildings as well as a supplement to this code [where applicable].
(11) "KRS" means the Kentucky Revised Statutes.
(12) "Manufactured home" is defined by KRS 1988.010(23) and 227.550(7).
(13) "Modular home" means an industrialized building system, which is designed to be used as a residence and which is not a manufactured or mobile home.
(14) "Ordinary repair" is defined by KRS 1988.010(19).
(15) "Single-family dwelling" or "one (1) family dwelling" means a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall not be connected to any other unit or building.
(16) "Townhouse" means a single-family dwelling unit constructed in a group of three (3) or more attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two (2) sides.
(17) "Two (2) family dwelling" means a building containing not more than two dwelling units which are connected.

Section 2. Administration and Enforcement of the Building Code. (1) Notwithstanding the requirements of the International Building Code/2000, the Kentucky changes set forth in the 2003 Kentucky Building Code Supplement shall be mandatory and shall supercede any conflicting provision of the international code.
(b) Except as provided in subparagraph 2 of this paragraph and the supersedence shall not apply to the provisions of this administrative regulation or the 2003 Kentucky Building Code Supplement, the International Building Code/2000, First Edition, Chapters 1 through 35 shall be the mandatory state building code for Kentucky for all buildings.
2. One (1) and two (2) family dwellings and townhouses shall be governed by 815 KAR 7:125.

Section 3. State Plan Review and Inspection Fees. The fees required by this section shall apply for plan review and inspection by the department.
(1) Fast track elective. A request for expedited site and foundation approval of one (1) week or less, prior to full review of the complete set of construction documents, shall be accompanied by the fee required by Table 121.3.1 in subsection (3) of this section, plus an additional fifty (50) percent of the basic plan review or inspection fee. The additional fifty (50) percent fee shall not be less than $400 and not more than $3,000. The entire fee shall be paid at the time of the initial plan submission.
(2) New buildings.
(a) The departmental inspection fees shall be calculated by:
1. Multiplying the total building area under construction by the cost per square foot of each occupancy type as listed in subsection (3) of this section; and
2. Computing the square footage by the outside dimensions of the building.
(b) The fee for buildings with multiple or mixed occupancies may be calculated using the cost per square foot multiplier of the predominant use.
(c) Table 121.3.1. Basic Office [Department] Fee Schedule. The basic plan review or inspection fee shall be:
(a) Assembly occupancies, eight and one-half (8.5) cents;
(b) Business occupancies, seven and one-half (7.5) cents;
(c) Day care centers, seven and one-half (7.5) cents;
(d) Educational occupancies, seven and one-half (7.5) cents;
(e) Frozen food plants, six and one-half (6.5) cents;
(f) High hazard occupancies, seven and one-half (7.5) cents;
(g) Industrial factories, six and one-quarter (6.25) cents;
(h) Institutional occupancies, eight and one-half (8.5) cents;
(i) Mercantile occupancies, seven and one-half (7.5) cents;
(j) Residential occupancies, seven and one-half (7.5) cents;
(k) Warehouses, five and one-half (5.5) cents;
(l) All other nonresidential, six and one-half (6.5) cents.
(4) Additions to existing buildings. Plan review fees for additions to existing buildings, which shall not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with the schedule listed in subsection (3) of this section by the measurement of the square footage of the addition, as determined by the outside dimensions of the addition. The minimum fee for review of plans under this subsection shall be $200.
(5) Change in use. Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with the schedule listed in subsection (3) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions. The minimum fee for review of plans under this subsection shall be $200.
(6) Alterations and repairs.
(a) Plan review fees for alterations and repairs not otherwise covered by the fee schedule shall be calculated by using the lower result of:
1. Multiplying the cost for the alterations or repairs by 0.0025; or
2. Multiplying the total area being altered or repaired by the cost per square foot of each occupancy type listed in the schedule in subsection (3) of this section.
(b) The total square footage shall be determined by the outside dimensions of the area being altered or repaired.
(c) The minimum fee for review of plans under this subsection shall be $200.
(7) Specialized fees. In addition to the fees listed in subsections (1) through (6) of this section, the following fees shall be applied to the specialized plan reviews listed in this subsection:
(a) Table 121.3.9, Automatic Sprinkler Review Fee Schedule:
1. 4-200 sprinklers, $150;
2. 201-300 sprinklers, $175;
3. 301-400 sprinklers, $210;
4. 401-500 sprinklers, $250;
5. Over 750 sprinklers, $250 plus $20 each sprinkler over 750.
(b) Fire detection system review fee:
1. Zero to 20,000 square feet shall be $150;
2. Over 20,000 square feet shall be $150 plus twenty (20) dollars for each additional 10,000 square feet in excess of 20,000 square feet.
(c) Standpipe plan review fee: $150 (combination stand pipe and riser plans shall be reviewed under the automatic sprinkler review fee schedule).
(d) Carbon dioxide suppression system review fee:
1. One (1) to 200 pounds of agent shall be $150;
2. Over 200 pounds of agent shall be $150 plus two (2) cents per pound in excess of 200 pounds.
(e) Clean agent suppression system review fee:
1. Up to thirty-five (35) pounds of agent shall be $150;
2. Over thirty-five (35) pounds shall be $150 plus six (6) cents per pound in excess of thirty-five (35) pounds.
2. The fee for gaseous systems shall be five (5) cents per cubic foot and not less than $150.
(f) Foam suppression system review fee:
1. Fifty (50) cents per gallon of foam concentrate if the system is not part of an automatic sprinkler system.
2. Foam suppression system plans that are submitted as part of an automatic sprinkler system shall be reviewed under the automatic sprinkler review fee schedule.
3. The fee for review of plans under this section shall not be less than $150 or more than $1,500.
(g) Commercial range hood fire suppression system review fee: $150 per hood.
(h) Dry chemical systems review fee (except range hoods):
1. One (1) to thirty (30) pounds of agent shall be $150;
2. Over thirty (30) pounds of agent shall be $150 plus twenty-five (25) cents per pound in excess of thirty (30) pounds.
(i) Flammable, combustible liquids or gases and hazardous...
materials plan review fee: $100 for the first tank, plus fifty (50) dollars for each additional tank and $100 per piping system including valves, fill pipes, vents, leak detection, spill and overfill detection, cathodic protection or associated components.

(j) Boiler and unfired pressure vessel fees: plan review fees of boiler and unfired pressure vessel installations shall be in accordance with 815 KAR 15.027.

Section 4. General. All plans shall be designed and submitted to conform to this administrative regulation [the 2002 edition of the Kentucky Building Code].

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:


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

LAJUANA S. WILCHER, Secretary

FLOYD VAN COOK, Executive Director

APPROVED BY AGENCY: February 24, 2005

FILED WITH LRC: April 8, 2005 at 1 p.m.

CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARRS, June 14, 2006)

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


NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654 requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.689. KRS 198B.658 requires the board to promulgate an administrative regulation to establish qualifications for licensure and certification. KRS 198B.660(1) and (2) requires the board to establish examination requirements. KRS 198B.684(3) requires the board to establish requirements for license renewal and inactive licenses. KRS 198B.676(1) requires the board to establish fees. This administrative regulation establishes the license requirements for HVAC contractors, requiring persons engaged in the heating, ventilation, and air-conditioning (HVAC) contracting business to be licensed effective July 1, 1996.

This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing HVAC contractors. This amendment is necessary in order to increase the application fee and note the change in the testing company administering the contractor examination.

Section 1. Definitions. (1) "Journeyman HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10). (2) "Master HVAC contractor" or "master" is defined by KRS 198B.650(2).

(3) "Journeyman HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10).

(3) "Supervise" means exercising authority and responsibility for the direction of all persons engaged in carrying out the actual work on HVAC systems, including the authority to exercise independent judgment regarding activities of others acting under his direction.

Section 2. General Requirements. (4) Mandatory license. Any person, other than one exempted by KRS 198B.674, who is engaged in the business of HVAC contracting shall comply with any administrative regulations of the board set forth in this administrative regulation.

(2) Continuing education. Each licensee shall complete eight (8) hours of continuing education approved by the board prior to renewal of the license. The continuing education shall be conducted by an approved training agency in accordance with the Standards and Policies for Accredited Organizations: Kentucky HVAC Master Contractor Education [for the next year]

(2) [3] Supervision.

(a) The master shall supervise and be primarily responsible for all HVAC work performed by the employees and subcontractors of the licensee.

(b) The master shall assign each apprentice to the oversight of one (1) or more journeyman.

(c) The master shall not personally engage in actual installation, maintenance, alteration, or remodeling or repair unless the master also possesses a journeyman license.

(3) [4] Company license. A licensee who is an employee of a company and whose license represents the company shall notify the board, in writing, if the licensee ceases to represent the company or if the name of the company changes, requesting a change of information on his license and paying the change of information fee listed in Section 7(5) of this administrative regulation.

Section 3. Initial Application Requirements. (1) Filing the application.

(a) An applicant seeking a master HVAC contractor license shall submit to the board:

1. A completed Master HVAC Contractor License Application on Form HVAC 1;

2. A nonrefundable initial license application fee of $250;

3. Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation;

4. Proof of the applicant's experience as required by KRS 198B.658(1)(b) and this administrative regulation; and

5. [A passport-sized color photograph of the applicant and]

6. [Proof of insurance as required by KRS 198B.658, if and]

(b) If the applicant is an employee representing a company, the applicant shall state the company name on the application form. The company may provide the insurance certificates and shall be subject to this administrative regulation.

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

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

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

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

(3) Except as provided in subsection (6) of this section, an applicant shall successfully complete the [ ]

(a) [The examination known as the "Kentucky Master HVAC Contractor Examination" which is developed, administered and scored by the International Code Council testing company Ex-
VOLUME 32, NUMBER 1 – JULY 1, 2005

perior, 2100 N.E. 53rd Avenue, Gainesville, Florida 32653, telephone: (800) 280-3926] with a passing grade of seventy (70) percent, or
(b) An applicant shall pass another last or method of examination deemed equivalent by and approved by the board.
(3) The examination fee shall be set by the licensing board and paid directly to the testing company [Examiner, 2100 N.E. 63rd Avenue, Gainesville, Florida 32653, telephone: (800) 280-3926] or other [testing-agency-approved-by-the-board].
(4) The examination fee shall be set by the testing company [Examiner, 2100 N.E. 63rd Avenue, Gainesville, Florida 32653, telephone: (800) 280-3926] or other [testing-agency-approved-by-the-board].
(5) The examination fee shall be set by the testing company and paid directly to the testing company [five-(50) dollars and shall accompany the application for examination to Examiner].
(6) The examination shall be provided and administered by the testing company [the-approved-company-or-agency] [Examiner] as often as necessary but at least four (4) times a year at various locations.
(7) A passing score on the examination shall be valid for a period of three (3) years.
(8) Upon application by a testing agency, a national code group or by an applicant for licensure certification, the office may recognize another examination as equivalent to the examinations administered by the International Code Council. The person or group submitting the examination shall [must] demonstrate that the examinations cover the same material and require the same level of knowledge as the International Code Council examinations.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section.
(1) Minimum experience. An applicant shall have the experience required by KRS 1988.658(1)(b), [at least two (2) years experience. Applicants shall receive credit for experience as follows.
(a) Credit for experience in the HVAC business-obtained-after July 4, 1995, shall be for HVAC work under the supervision of a master.
(b) Credit for experience-obtained prior to July 4, 1995 shall be for HVAC work as an actively engaged and lawfully established self-employed HVAC contractor/mechanic and for work as an actively engaged and lawfully qualified mechanic under another HVAC contractor.
(2) Records of experience. An applicant's experience shall be listed on the application form. Additional proof of experience may be requested by the board, prior to or after licensing, if the board has reason to believe that the experience shown is insufficient or nonexistent.

Section 6. Renewal and Reactivation Requirements and Procedures. (1) Except for licenses placed in inactive status, in accordance with subsection (5) of this section, an application for license renewal shall be filed by each licensee no later than the last day of the licensee's birth month. Licenses shall be renewed [June 30 of] each year.
(2) A renewal fee of $250 shall be paid prior to renewal. The office [department] shall send renewal application cards to each license each year to be returned with the renewal fee.
(3) Renewal application cards filed late, but no more than ninety (90) days after the last day of the licensee's birth month [later than September-29], shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the renewal fee.
(4) Failure to renew ninety-one (91) days after the last day of the licensee's birth month [by September-29] shall void the license and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.
(5) Licenses which have been placed in inactive status shall be [are] exempt from annual renewal. An Inactive License [They] shall be reactivated upon payment of a renewal fee for the year reactivated and [at] the reactivation fee and upon compliance with the continuing education requirements for each year of inactive status.
(6) If an initial license is [will be] for a period of less than twelve (12) months, the initial license fee shall [may] be reduced on a pro rata basis.

The application for renewal or reactivation of a licensed master HVAC contractor shall be denied if the applicant fails to:
(a) Pay the fees required for renewal, reactivation and restoration, if applicable;
(b) Comply with the continuing education requirements established in Section 2(2) of this administrative regulation; or
(c) Provide the current insurance certificate required by KRS 1988.658 [and this administrative regulation].
(3) A person who has [has-who-have] not previously provided a passport-sized color photograph shall provide one (1) with the license's next initial renewal application filed immediately following the effective date of this administrative regulation.

Section 7. Special Service Fees. In addition to other fees required by this administrative regulation, the following fees shall also be applied:
(1) Restoration fee. The fee for renewal of expired licenses shall be fifty (50) dollars.
(2) Inactive status fee. A licensee may place his license in "inactive status" upon payment of twenty (20) dollars. Inactive status shall be maintained until the licensee requests reactivation in accordance with Section 6(5) of this administrative regulation.
(3) Reactivation fee. A license shall be reactivated upon payment of a fee of twenty (20) dollars and compliance with Section 6(5) of this administrative regulation.
(4) Duplicate license fee. A verified lost or destroyed licenses shall be replaced upon payment of a ten (10) dollar fee.
(5) Change of information fee. The fee for the change of information required by Section 2(3) [2(4)] of this administrative regulation shall be fifteen (15) dollars. If a change of information request is simultaneous with license renewal, this fee shall not be applicable.

Section 8. Revocation or Suspension of Licenses. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 1988.672.

(1) The following material is incorporated by reference:
(a) Form HVAC 1, Master HVAC Contractor License Application, March 2005; and
(b) Standards and Policies for Accredited Organizations: Kentucky HVAC Master Contractor Education, June 2005

LAJJANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH CRC: March 31, 2005 at 2 p.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel
Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at ARR, June 14, 2005)

VOLUME 32, NUMBER 1 – JULY 1, 2005


NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.654(1) requires the Board of Heating, Ventilation and Air Conditioning Contractors to promulgate administrative regulations necessary to enforce the provisions of KRS 198B.650 to 198B.684. KRS 198B.658 requires the board to promulgate an administrative regulation to establish qualifications for license and certification. KRS 198B.660(1) and (2) requires the board to establish examination requirements. KRS 198B.664(3) requires the board to establish requirements for license renewal and for inactive licensees. KRS 198B.676(1) requires the board to establish fees. This administrative regulation establishes the licensure requirements for Journeyman HVAC Mechanics requiring persons engaged in the heating, ventilation, and air conditioning (HVAC) installation and repair business to be licensed effective July 1, 1995. This administrative regulation sets forth the required proof of experience, examination, fees, application form and other administrative requirements for licensing Journeymen HVAC Mechanics. This amendment is necessary in order to increase the annual license renewal fee and note the change in the testing company administering the examination.

Section 1. Definitions (1) "HVAC" means heating, ventilation, and air conditioning and includes the following components:
(a) Air conditioning or cooling system, as defined by KRS 198B.650(1);
(b) Burner service, as defined by KRS 198B.650(4);
(c) Heating system, as defined by KRS 198B.650(8);
(d) Hydronic system, as defined by KRS 198B.650(9); and
(e) Ventilation system, as defined by KRS 198B.650(15) as defined by KRS 198B.650(15).

(2) HVAC-contractor or "master" is defined by KRS 198B.650(12).

(3) "Journeyman HVAC mechanic" or "journeyman" is defined by KRS 198B.650(10).

Section 2. General Requirements (1) [Mandatory-licensure]. A person engaging in HVAC work shall comply with the applicable requirements of the administrative regulation.
(2) Continuing education. Each journeyman licensee shall complete eight (8) hours of continuing education [approved by the board] prior to renewal of the license. The continuing education shall be conducted by an authorized training provider in accordance with the Policies and Standards for Accredited Individuals and Organizations; Kentucky HVAC Journeyman Education Program for the Board of Heating, Ventilation, and Air Conditioning Contractors.
(3) The journeyman shall be physically on site, personally observe and be responsible for each apprentice assigned to the journeyman in carrying out the installation, alteration and repair of HVAC systems and shall otherwise operate under the general direction of the master.

Section 3. Initial Application Requirements. (1) Filing the application. An applicant seeking a journeyman HVAC mechanic license shall submit to the board:
(a) A completed Journeyman HVAC Mechanic License Application on Form HVAC 2[, September, 1995.
]
(b) A nonrefundable initial license application fee of fifty ($50) dollars;
(c) Proof of satisfactory completion of the examination required by Section 4 of this administrative regulation; and
(d) Proof of the applicant's experience as required by KRS 198B.658(2)(b) and Section 5 of this administrative regulation;
(e) A passport-sized color photograph of the applicant.
(2) Termination of application. The initial application shall remain pending until all requirements are met up to a period of one (1) year after the date the application is submitted. At the end of one (1) year, the application shall be void.

Section 4. Examination Requirements. An applicant shall take and pass the examination administered in compliance with this section.
(1) The examination shall test the applicant's basic knowledge of codes, standards and [of] current technological and industry recommended practices with respect to the proper installation, maintenance, repair, remodeling or alteration of HVAC systems.
(2) Reasonable accommodations shall be made if necessary to provide accessibility to disabled applicants, upon request. An oral examination shall be given upon good cause shown.
(3) Except as provided by subsection (6) of this section, an applicant shall successfully complete:
(a) The examination known as the "Kentucky Journeyman HVAC Mechanic Examination" which is developed, administered, and scored by the International Code Council [leasing company Experior, 2100 N.E. 53rd Avenue, Gainesville, Florida 32653, telephone (904) 280-3626] with a passing score of seventy (70) percent; or
(b) The applicant shall pass another test or method of examination deemed equivalent by and approved by the board.
(4) Requests to sit for the examination shall be made directly to the International Code Council [Experior] or other testing agency approved by the board.
(5) The examination fee shall be forty ($40) dollars and shall accompany the application for examination to Experior.
(6) The examination shall be provided and administered by Experior as often as necessary but at least four (4) times a year at various locations.
(7) A passing score on the examination shall be valid for a period of two (2) years.
(8) Upon application by a testing agency, a national code group or by an applicant for licensure, the office may recognize another examination as equivalent to the examinations administered by the International Code Council. The person or group submitting the examination shall demonstrate that the examinations cover the same material and require the same level of knowledge as the International Code Council examinations.

Section 5. Experience Requirements. An applicant shall meet the experience requirements of this section. (1) Minimum experience. An applicant shall have the experience required by KRS 198B.658(2)(b), [at least two (2) years experience. Applicants shall receive credit for experience as follows:
(a) Credit for experience working in the HVAC trades obtained after July 1, 1995, shall be HVAC work under the supervision of a master.
(b) Credit for experience obtained prior to July 1, 1995 shall be for work as an actively engaged and lawfully qualified solo owned contractor/contractor in a trade for work under another Kentucky HVAC contractor.
(c) Credit for completion of one (1) year of teaching experience in a board state approved HVAC technical education program shall be considered equivalent to one (14) year employment.
(2) Records of experience. Additional proof of experience may be requested by the board, prior to or after licensing. If the board has reason to believe that the experience shown is insufficient or nonexistent.
(3) A minimum of 3,000 work hours shall be completed as part of the two (2) years experience requirement of subsection (1) of this section.
(4) Education may be substituted for experience, pursuant to KRS 198B.658(4), subject to the prior approval of the board.

Section 6. Renewal Requirements and Procedures. (1) A renewal fee of fifty ($50) dollars shall be paid prior to renewal. The office [department] shall send renewal cards to each licensee to be returned no later than the last day of the licensee's birth month. Licenses shall be renewed each year [June 30].
(2) A journeyman HVAC license renewal filed late, but no more than ninety (90) days after the last day of the licensee's birth month [later than September 30], shall be accepted, but a restoration fee, in accordance with Section 7(1) of this administrative regulation, shall be added to the renewal fee.
(3) Failure to renew ninety-one (91) days after the last day of the licensee's birth month [by September 30] shall void the license
and the applicant shall comply with all requirements for a new license pursuant to Section 3 of this administrative regulation.

(4) Requests for renewal of a licensed journeyman HVAC mechanic shall be denied if the applicant fails to [any of the following four]:

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

(b) Comply [An applicant to comply] with the continuing education requirements.

(5) A licensee who has [Licensee who has not previously] provided a passport-sized color photograph shall provide one (1) with the licensee's next [their application for renewal immediately following the effective date of this administrative regulation].

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

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

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

Section 8. Revocation or Suspension of License. A license issued pursuant to this administrative regulation may be suspended or revoked by the board for any of the reasons stated in KRS 188B 672.

Section 9. Incorporation. Material incorporated by reference. (1) The following material is incorporated by reference:

(a) Form HVAC 2, Journeyman HVAC License Application, March 2005, and


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

LAJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 31, 2005 at 2 p.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Division of Heating, Ventilation and Air Conditioning
(As Amended at AARRS, June 14, 2005)

815 KAR 8:045. [*Limited*] licenses for journeyman HVAC mechanics.

RELATES TO: KRS 188B.650, 188B.654, 188B.658, 188B.658, 188B.660, 188B.662, 188B.664, [188B.666] 188B.675, 188B.684

STATUTORY AUTHORITY: KRS 188B.654(1), 188B.658, 188B.660(1), (2), 188B.664(3), 188B.676(1), 188B.684

NECESSITY, FUNCTION, AND CONFORMITY: KRS 188B.654(1) requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce KRS 188B.650 to 188B.689 (the HVAC-contractor's law). This administrative regulation is a supplement to 815 KAR 8.020, and establishes the requirements for an applicant who [a mechanism for the board to review and approve relevant experience and establish relevant examinations when an applicant] seeks to become licensed to perform limited functions pursuant to the journeyman HVAC licensing law. This administrative regulation is necessary to treat qualified persons similarly allowing applicants to be licensed according to their qualifications, and in order to meet the intention of KRS Chapter 13A as it relates to tuition of administrative regulations.

Section 1. Application for Limited Licenses. Applicants seeking to be licensed as a journeyman mechanic under 815 KAR 8.020, but who choose [chooses] to use their experience and career goals to function in a limited capacity, [shall comply with the application requirements of 815 KAR 8.020, except that they may request, in writing, shall be granted a limited license upon proof of experience and examination, as follows:]

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

(a) A completed limited journeyman HVAC duct mechanic license form HVAC 5-E, February 2006;

(b) A nonrefundable initial license application fee of fifty (50) dollars;

(c) Proof of satisfactory completion of the "Kentucky Limited Journeyman HVAC Duct Mechanics Examination" developed and administered by the International Code Council;

(d) A passport-sized color photograph of the applicant; and

(e) Proof of the applicant's experience as required by KRS 188B.658(2)(b) and by 815 KAR 8.020, Section 5. (The applicant shall apply for, provide proof of relevant experience of duct work and successfully pass the examination given by Block and Associates known as Journeyman HVAC Duct Mechanics-KY01-"

(2) [Limited] journeyman HVAC installer mechanic - An applicant seeking a [Limited] journeyman HVAC installer mechanic license shall submit to the board:

(a) A completed limited journeyman HVAC installer mechanic license form HVAC 5-E, February 2006;

(b) A nonrefundable initial license application fee of fifty (50) dollars;

(c) Proof of satisfactory completion of the "Kentucky Limited Journeyman HVAC Installer Examination" developed and administered by the International Code Council;

(d) A passport-sized color photograph of the applicant; and

(e) Proof of the applicant's experience as required by KRS 188B.658(2)(b) and by 815 KAR 8.020, Section 5.

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

(ii) Upon application for a test by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examinations administered by the International Code Council. The person or group submitting the examination shall [must] demonstrate that the examinations cover the same material and require the same level of knowledge as the International Code Council examinations. The applicant shall apply for, provide proof of relevant experience of altering and installing and successfully pass the examination given by Block and Associates known as "Journeyman HVAC-Installer Mechanic-KY01-"

Section 2. Limited Licenses and Responsibilities. (1) A person licensed under the alternative limited licensing provisions of this administrative regulation may [to] work independently within the range of the limited license authorization while under the general supervision of a master HVAC contractor.

(2) A person holding a limited license shall not hold himself out as complying with all the journeyman HVAC mechanic experience and examination requirements of 815 KAR 8.020, [and]

(3)[and] A limited license under this administrative regulation shall not replace the requirement that each master HVAC contractor shall have in his employment at least one (1) journeyman HVAC mechanic whose license is not limited.

(iii) A person holding a "limited" license, pursuant to Section 4(1) or (2) of this administrative regulation, shall serve under the
Section 3. Renewal Requirements and Procedures. Licenses issued pursuant to this administrative regulation shall be renewed in accordance with the renewal requirements established [as described] in 815 KAR 8:020, Section 6.

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

(a) "Form HVAC 4, Limited Journeyman HVAC [Limited] Installer License Application," February 15, 2005; and


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

LAJUANA S. WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
FILED WITH LRC: March 15, 2005 at 2 p.m.
CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
(As Amended at ARRS, June 14, 2005)
815 KAR 15:080. Fees for licensing new boiler and pressure vessel contractors.

RELATES TO: KRS [Chapter] 236.210
STATUTORY AUTHORITY: KRS 236.030, 236.210(3)
[23A.100, 236.210]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 236.210 authorizes the executive director [Commissioner], through the Board of Boiler and Pressure Vessel Rules to establish reasonable fees for the licensing of all new boiler and pressure vessel contractors. This administrative regulation establishes [is necessary to establish] the fees incident to the licensing of boiler and pressure vessel contractors.

Section 1. Filing the Application. (1) All boiler or pressure vessel contractors required by KRS 236.210 to be licensed shall submit to the Boiler Inspection Section:

(a) A completed application on Form BPVC #01; and

(b) A nonrefundable initial annual fee of $250 by check or money order payable to the Kentucky State Treasurer.

(2) All licenses for boiler or pressure vessel contractors shall expire on the last day of the licensees' birth month. If an initial license is [will be] for a period of less than twelve (12) months, the license fee shall [may] be reduced on a pro rata basis [December 31 of the calendar year in which it was issued].

Section 2. License Renewal. (1) Applicants for renewal of a boiler or pressure vessel contractor license shall submit to the Boiler Inspection Section:

(a) A completed Application for License Renewal on Form BPVC #02; and

(b) A nonrefundable annual renewal fee of $175 by check or money order payable to the Kentucky State Treasurer.

(2) The amended boiler contractor fees shall be applicable to all applications filed after the effective date of this administrative regulation or August 15, 2001, whichever is later.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form BPVC #01, March 2005 [May, 2001], Application; and

(b) Form BPVC #02, Application for License Renewal, June 2005.

[b] Form BPVC #02, May, 2001, Memorandum to All Licensed Contractors regarding Application for License Renewal.

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

LAJUANA WILCHER, Secretary
FLOYD VAN COOK, Executive Director
APPROVED BY AGENCY: March 10, 2005
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CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Housing, Buildings and Construction
Office of State Fire Marshal
(As Amended at ARRS, June 14, 2005)

RELATES TO: KRS 227.450, 227.489; 227.490-227.494
STATUTORY AUTHORITY: KRS 227.489 [227.490] 5
NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the Executive Director [Commissioner] of the Office [Department] of Housing, Buildings and Construction to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation establishes the procedures for achieving and maintaining the certification. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" means the Office [Department] of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means a person who has:

(a) Met the requirements established in this administrative regulation, and

(b) Received a certificate of compliance.

(4) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:120 as part of the Kentucky Building Code.

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" is defined by KRS 227.450(5).

(7) "Electrical" is defined by KRS 227.450(5).

(8) [8]] "Electrical industry" means the industry engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(7) [9]] "Employee" means a person who is employed on a full-time, part-time, or contractual basis.

(8) "Executive director" means the Executive Director of the Office of Housing, Buildings and Construction.

(9) "Office" means the Office of Housing, Buildings, and Construction.

(10) [10]] "Temporary certification" means a certificate issued by the department under the provisions of Section 4 of this administrative regulation which is valid for a limited period of time.

(44) "NCPCCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

(11) "Temporary certification" means a certificate issued
by the office under the provisions of Section 4 of this adminis-
tative regulation which is valid for a limited period of time.

Section 2. Applicability. This administrative regulation shall apply to an electrical inspector in Kentucky and to an applicant [1] for certification as an electrical inspector.

Section 3. Categories of Certified Electrical Inspectors. A certi-
fied electrical inspector shall be classified as an electrical inspector one (1) and two (2) family or an electrical inspector general.
(1) An electrical inspector one (1) and two (2) family shall:
(a) Be a person who has passed the NCPCCI 2A examina-
tion; and
1. Has passed the applicable NCPCCI examination; or
2. Was classified as a residential inspector; and
(b) Be qualified to perform an electrical inspection and approve an electrical installation related to a:
1. One (1) or two (2) family dwelling; or
2. Manufactured or mobile home [homes]
(2) An electrical inspector general shall:
(a) Be a person who has passed the NCPCCI 2A examina-
tion; and
1. Has passed the applicable NCPCCI examination; or
2. Was classified as a commercial inspector; and
(b) Be qualified to inspect and approve all types of residential, commercial, industrial, or other property which requires electrical inspection.

Section 4. Requirements for Temporary Certification. (1) Before an applicant may sit for the examination for tempo-
rary certification as an electrical inspector, the applicant shall:
(a) Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:
1. Residential wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or
2. Residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector general;
(b) Possess:
1. The ability to read and write the English language; and
2. A general educational level satisfactory to perform his duties;
(c) Submit a completed Form SFM-EL-1, Application for Elec-
trical Inspectors [Inspector], which shall be:
1. Notarized; and
2. Received by the office [department] at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and
(d) Submit with the application:
1. A written statement of need for certification from the local official responsible for the electrical or building inspection program; and
2. A fee of $100 dollars in the form of a check or money order payable to the Kentucky State Treasurer [Commonwealth of Kentucky];
(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Elec-
trical Advisory Committee to establish his background in electrical construction familiarity through other means. The Office of Housing, Buildings and Construction with recommendations from the Electrical Advisory Committee shall:
(a) Review the documentation; and
(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.
(3) An applicant shall receive credit earned for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.
(4) The Electrical Advisory Committee shall review an applicant for temporary certification to determine his eligibility to sit for the examination.
(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reis-
sued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the Office of Housing, Buildings and Construction [electrical advisory committee], the applicant shall pass the office's [department's] written examination for the class of temporary certification.
(2) An examination shall be:
(a) Administered within thirty (30) days after acceptance by the Office of Housing, Buildings and Construction [Electrical Advisory Committee] at the office [department's] office in Frankfort, Ken-
tucky, unless another location is specifically designated; and
(b) Open book based on the National Electrical Code, which is incorporated by reference in 815 KAR 7:120 as part of the Ken-
tucky Building Code.
(3) A grade of seventy-five (75) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of fifty (50) dollars.
(4) An applicant shall not [be permitted to] retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector. General and One (1) and Two (2) Family. (1) An applicant for full certification as an electrical inspector shall:
(a) Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:
1. Residential wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or
2. Residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector general;
(b) Possess:
1. The ability to read and write the English language; and
2. A general educational level satisfactory to perform his duties;
(c) Submit a completed Form SFM-EL-1, Application for Elec-
trical Inspectors [Inspector], which shall be:
1. Notarized; and
2. Received by the office [department] at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and
(d) Submit with the application:
1. A fee of $100 dollars in the form of a check or money order payable to the Kentucky State Treasurer [Commonwealth of Kentucky]; and
2. Proof of successful completion of the NCPCCI examination for:
   a. Electrical inspector general; or
   b. Electrical inspector one (1) and two (2) family.
(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Office of Housing, Buildings and Construction with recommendations from the Electrical Advisory Committee shall:
(a) Review the documentation; and
(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.
(3) Following the review and approval of an applicant's qualifications and examination results by the electrical advisory commit-
tee, the office [department] shall issue certification for the appro-
priate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 3 of this administrative regulation.
(4) A certificate issued pursuant to this section shall be valid from July 1 to June 30.
(5) A fully-certified inspector shall, upon request, be placed on
"inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. A person holding an inactive certificate shall not make an electrical inspection while his certificate is in inactive status.

(6)(6) Each certified electrical inspector holding a valid certificate under a previous law shall be exempt from the testing requirements of this administrative regulation.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall:
(a) Be issued to an individual; and
(b) Not be issued to a corporation, partnership, company, or other entity.
(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A.
(3) Each electrical inspector certification, except a temporary certificate, shall expire on the last day of the inspector's birth month in each June-30 in each succeeding year to maintain certification.
(4) A renewal fee of fifty (50) dollars shall be paid by each certified electrical inspector before the last day of the inspector's birth month [June-30] in each succeeding year to maintain certification.
(5) Delinquent renewal fee. A certified electrical inspector who fails to submit the application for renewal on or before the last day of his or her [their] birth month [July 1 of each year] shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education completed 180 days after the last day of the inspector's birth month [January 1 of the following year], the certification shall be canceled and shall not be renewed.
(6) Reinstatement. A certificate that has been revoked or canceled may be reinstated upon petition to the executive director [commissioner] for good reason.

(7) An applicant for reinstatement shall pay a reinstatement fee of $100; and shall:
(a) Pay the delinquent renewal fees; and
(b) Submit proof of continuing education for each year the certificate was revoked or canceled, or
(c) Pass the NCPCCI examination within the current year.

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the Office of Housing, Buildings and Construction with advice from the Electrical Advisory Committee.
(2) Each electrical inspection shall be made in compliance with the edition of the National Electrical Code, which is incorporated by reference in 815 KAR 7.120 as part of the Kentucky Building Code.
(3) In addition to the National Electrical Code, the electrical inspector shall be familiar with the applicable building codes or fire safety codes governing buildings in the area in which the Inspector [he] performs an inspection to determine the occupancy load of a facility.
(4) The electrical inspector shall make an inspection upon request of the electrical contractor.
(5)(a) Temporary construction service approvals shall receive a green sticker and a certificate of compliance,
(b) For an installation [except that, for installations] subject to KRS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Initial Notice of Release" (Notice of Release for Temporary Electrical Service, Form PHPS-001) and has recorded its number upon the certificate of compliance.
(6) Except for manufactured homes, the electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.
(b) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting for the building during completion of construction and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.
(c) Upon final approval of an electrical installation, the inspector shall:
1. Attach a green sticker to the main service equipment;
2. With his signature and certification number, name of the project and location; and
3. Stating that the system has been inspected for compliance with the National Electrical Code; and
3. Provide the owner or the owner's agent with a certificate of compliance.
For an Installation [except that, for installations] subject to KRS 211.350, the electrical inspector shall not issue a certificate of compliance or otherwise release the property for the supply of electricity until he has received the local health department's "Final Notice of Release" (Notice of Release for Permanent Electrical Service, Form PHPS-002) and has recorded its number upon the certificate of compliance.
(7) A red, yellow or green sticker or a certificate of compliance to be used by the electrical inspector shall be issued or approved by the office [department].
(8) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection and make them available to the office [department] upon request. The record shall contain, as a minimum, the following information:
(a) Sufficient information to identify the location of the structure inspected;
(b) The date of the inspection;
(c) The type of structure, whether residential, commercial, industrial or other;
(d) The designation of a required permit and the agency granting the permit;
(e) The size and complexity of the structure; and
(f) Deficiencies in meeting code requirements and the action required to comply and
(g) Other pertinent information considered necessary to allow for a review of the inspection.
(9) Violation of KRS 211.350(4) by a certified electrical inspector shall constitute misconduct.

Section 9. Complaints and Greviance Procedures. (1) A person may file a complaint against a certified electrical inspector if the person believes that an act or omission of the inspector in the performance of his duties caused an undue hardship to the person.
(2) A complaint or allegation of misconduct shall be submitted in writing to the executive director [commissioner] and shall:
(a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and
(b) Specify the action requested of the executive director [commissioner].
(3) Following an investigation, the executive director [commissioner] shall:
(a) Cause the matter to be heard and a recommendation rendered by the Electrical Advisory Committee;
(b) Set the matter for public hearing; or
(c) Take other appropriate action to resolve or correct the matter.

Section 10. Suspension and Revocation of Certification. The executive director [commissioner] shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the executive director [commissioner] after a KRS Chapter 138 Administrative [Departmental] hearing, to have:
(1) Engaged in an activity which constitutes a conflict of interest, including:
(a) Work as an electrical contractor or electrician;
(b) Involvement in an activity in the electrical industry; or
(c) Having a pecuniary or associational interest;
Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) State-owned property including each building being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) A state employed certified electrical inspector shall inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) A state employed certified electrical inspector shall assert jurisdiction for the electrical inspection of a project subject to state plan review under the Kentucky Building Code.

(4) A state employed certified electrical inspector may inspect a state leased facility, upon request.

Section 12. Interpretations. If a provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Office [Department] of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the office [department] shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction.

Section 13. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference:

(a) Form SFM-EL-1, "Application for Electrical Inspectors, May, 2001", Office [Department] for Housing, Buildings and Construction;

(b) Form SFM-EL-1A, "Renewal Application for Electrical Inspector Certification, May, 2001", Office [Department] for Housing, Buildings and Construction;

(c) Form PHPS-001, "Notice of Release for Temporary Electrical Service", (May 1998 Edition), Department for Public Health; and


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

LAUJANNA WILCHER, Secretary

FLOYD VAN COOK, Executive Director

APPROVED BY AGENCY: March 10, 2005

FILED WITH LRC: March 15, 2005 at 11 a.m.

CONTACT PERSON: Frank L. Dempsey, General Counsel, Office of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5405, phone (502) 573-0394, fax (502) 573-1057.
VOLUME 32, NUMBER 1 – JULY 1, 2005

3. For electrical contractor licenses, proof of compliance with the insurance and workers' compensation requirements established in Section 7 of this administrative regulation; and
4. A copy of the applicant's license from the participating state.

[146] Applicants for reciprocity shall complete Form SFM-EC-4 and shall comply with the requirements set forth in the reciprocity agreement with the state in which they are licensed.

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

Section 4. Verification of Experience. (1) An applicant shall submit verification of experience for licensure as a master electrician or electrician.
(2) Verification shall be submitted in the form of:
(a) Tax returns or other official tax documents which indicate the applicant's occupation or the nature of the applicant's business activities, including Federal Schedule C, Form W-2, Form 1099, or local occupational tax returns;
(b) Copies of business licenses issued by a county or municipal government which did not issue electrical contractor's, master electrician's or electrician's licenses prior to June 24, 2003 if the business license indicates the applicant operated as an electrical contractor or worker;
(c) A sworn affidavit, on the affidavit's letterhead, certifying that the author of the letter has personal knowledge that the applicant has worked as a master electrician or an electrician from at least one of the following:
   1. An electrical workers union;
   2. A certified electrical inspector; or
   3. An employer who employed the applicant as an electrician or a master electrician; or
(d) Records of a branch of the United States Armed Forces which indicate the applicant performed a function which primarily involves electrical work. Experience gained while in the military shall be deemed to have been earned in Kentucky.

Section 5. Examinations. (1) Applicants for an electrical contractor's license shall pass the "Kentucky Electrical Contractor Examination" developed and administered by the International Code Council [Examiner-Business and Law-Electrical Examination No.-10440] with a score of at least seventy (70) percent.
(2) Applicants for a master electrician's license shall pass the "Kentucky Master Electrician Examination" developed and administered by the International Code Council [Examiner-Master Electrician Examination No.-20114] with a score of at least seventy (70) percent, [1-and]
(3) Applicants for an electrician's license shall pass the "Kentucky Electrician Examination" developed and administered by the International Code Council [Examiner-Journeyman-Electric Examination No.-20241] with a score of at least seventy (70) percent.
(4) Upon application by a testing agency, a national code group or by an applicant for certification, the office may recognize another examination as equivalent to the examination developed and administered by the International Code Council. The person or group submitting the examination shall [must] demonstrate that the examination covers the same material and requires the same level of knowledge as the International Code Council examinations.

Section 6. Appeal Procedure. (1) Applicants denied a license may appeal the decision to the Executive Director of the Office of Housing, Buildings and Construction [to the Electrical-Advisory Board]. The applicant shall submit written notice of the appeal to the Office of Housing, Buildings and Construction within ten (10) days of receiving notice that the license application has been denied.
(2) The appeal shall be conducted pursuant to KRS Chapter 13B by a hearing officer appointed by the Executive Director of the Office of Housing, Buildings and Construction [Electrical-Advisory Board].
(3) The hearing officer shall submit findings of fact, conclusions of law and a recommended order to the Executive Director [Electrical-Advisory Board], who [which] may adopt it, amend it or substitute his or her [his] own decision based upon the evidence.

Section 7. Proof of Insurance. (1) Applicants for an electrical contractor's license shall provide proof of compliance with liability insurance requirements by producing an insurance certificate showing general liability insurance coverage of at least $500,000 issued by an authorized Kentucky insurer or other insurer certified by the Kentucky Department of Insurance.
(2) The applicant shall provide proof of workers' compensation insurance by providing:
(a) An insurance certificate from an authorized Kentucky insurer or other workers' compensation coverage provider; or
(b) A letter certifying that the applicant is not required to obtain workers' compensation coverage.
(3) Electrical contractors shall require their liability and workers' compensation insurers to provide notice to the Office of Housing, Buildings and Construction if:
(a) A policy is cancelled, terminated, or not renewed [renewed]; or
(b) The policy limits are lowered.
(4) Electrical contractors shall advise the Office of Housing, Buildings and Construction of any change in their insurance coverage, including cancellation or termination of any policy or any change in the insurer providing the coverage.

Section 8. Renewal Requirements. (1) Licenses shall be valid for one (1) year and shall be renewed on or before the last day of the licensee's birth month. For electrical contractor licenses issued to corporations, partnerships or business entities without a birth month, the renewal month shall be the month the license was issued.
(2) The Office of Housing, Buildings and Construction may issue an initial license to an applicant for a period of up to two years. An electrical contractor license may be renewed on a pro rata basis. [Initial license renewal fee shall be refundable.]
(3) An initial license shall not be for a term of longer than one (1) year plus sufficient months to reach the applicant's next birth month or renewal month.

Section 9. Inactive License Status. (1) An applicant may request a license be placed in inactive status. A licensee shall not perform any electrical work requiring a license if the license is inactive.
(2) An electrical contractor license in inactive status shall not be required to maintain liability insurance or provide proof to the Office of Housing, Buildings and Construction of compliance with workers' compensation laws.
(3) Certified electricians may be licensed as an electrical contractor, master electrician or electrician, but shall maintain that license as inactive while having an active electrical inspector certification.
(4) Performing electrical work which requires a license while holding an inactive license shall be grounds for revocation or suspension of all electrical licenses and certifications held by the licensee.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form SFM-EC-2, "Electrical Contractor's License Applica-
CABINET FOR HEALTH AND FAMILY SERVICES

Office of Certificate of Need

(As Amended at ARRS, June 14, 2005)


RELATES TO: KRS 216B 010-216B.130, 216B.455, 216B 9902(1), 216B.40(3)(a), 216B.130; EO 2004-726

NECESSITY: FUNCTION, AND CONFORMITY: KRS 216B.04(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. [EO 2004-726 reorganized the Cabinet for Health Services and the Cabinet for Families and Children and placed the Office of Certificate of Need under the Cabinet for Health and Family Services.] This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning on the effective date of this administrative regulation (July 30, 2004) and ending June 30, 2006.

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the period beginning on the effective date of this administrative regulation and ending June 30, 2005 to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census implicit price deflator for construction shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130 (these adjustments).

(3) The change in the deflator for the period from December 31, 2004 (June 30, 2005), represents (1.06) [1.04] percent increase.

Section 2. [Beginning on the effective date of this administrative regulation]

(1) The capital expenditure minimum established in KRS 216B 015(7) shall be $2,177,064.66.

(2) The major medical equipment minimum established in KRS 216B 015(16) shall be $2,177,856.00. The expenditure minimums provided in KRS Chapter 216B shall be increased for the year 2005 as follows:

(1) The expenditure minimum of $1,870,973 for capital expenditure shall be increased to $1,951,642.

(2) The expenditure minimum of $1,870,973 for major medical equipment shall be increased to $1,951,642.

JAMES W HOLSINGER, M.D., Secretary
DUANE KILTY JR., Ph.D., Undersecretary
JOHN H. GRAY, Executive Director

APPROVED BY AGENCY: March 21, 2005
FILED WITH LRC: March 22, 2005 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, Cabinet for Health and Family Services, 275 East Main Street, 5 West, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development

(As Amended at ARRS, June 14, 2005)

921 KAR 2:008. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP)


NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726 effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services. 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 205.003(1) requires the secretary to promulgate administrative regulations to develop a work program for recipients of public assistance under Title IV-A of the Federal Social Security Act, 42 U.S.C. 601 to 619. [KRS Chapter 206 requires the Cabinet for Health and Family Services [Families and Children] to administer the assistance program—the Kentucky Transitional Assistance Program, the block-grant program funded pursuant to 42 U.S.C. 601 et seq.] KRS 205 200(2) requires the secretary to promulgate administrative regulations prescribing [that] the conditions of eligibility for [public] assistance [be prescribed] by administrative regulations in conformity with 42 U.S.C. 602 and federal regulations. KRS 205.003(3) authorizes the secretary to promulgate administrative regulations prescribing as a condition of eligibility that a needy child shall regularly attend school, and the degree of responsibility of the person or persons in whose home the needy child must reside. This administrative regulation establishes the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support activities, strikers, minor tenant parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

Section 1. Definitions. (1) "Assistance" means the definition of "assistance" pursuant to 45 C.F.R. 260.31.

(2) "Battered or subjected to extreme cruelty" means an individual who has been subjected to or is subjected to:

(a) A physical act that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in a nonconsensual sexual act or activity;

(e) Threat of, or an attempt at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care.

(3) "Cabinet" means the Cabinet for Health and Family Services—Families and Children.

(4) "Child" means an individual:
(a) Age fifteen (15) or under;
(b) Age sixteen (16), seventeen (17), or eighteen (18) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school; or
(c) Under age eighteen (18) and a high school graduate.

(d) [66] "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient.

(5) "Constant care" means active care for a household member by an individual other than:

(a) The home the household member or individual spends sleeping;
(b) Time in which the household member is in school unaccompanied by the individual;

(6) "Domestic violence" means the same as the definition for "battered or subjected to extreme cruelty" pursuant to subsection (2) of this section.

(7) "Employed" means a person who performs a physical or mental activity in exchange for direct monetary compensation.

(8) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families (TANF) money payment program for a child who is deprived of parental support or care due to:

(a) Death of one (1) parent;
(b) Continued voluntary or involuntary absence of one (1) parent;
(c) If both parents are in the home:
   1. Physical or mental incapacity of one (1) parent; or
   2. Unemployment or at least one (1) parent.

(9) "Kentucky Works" means a program that assists a:

(a) Recipient of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance; or
(b) Former K-TAP recipient with job retention service.

(10) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;
(b) Is not married or is married and not living with the spouse; and
(c) Has a minor child in the applicant's or recipient's care.

[[14] [42]] "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of relationship) parent of the child.

(11) [42] "Prior labor market attachment" or "PLMA" means the parent has earned not less than $1,000 during the twenty-four (24) months prior to the application for K-TAP benefits based on the deprivation of unemployment pursuant to Section 10 [9] of this administrative regulation.

(12) [(13)] [43] "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent resident pursuant to 8 U.S.C. 1101(a)(25); or
(b) Granted asylum pursuant to 8 U.S.C. 1158;
(c) A refugee who is admitted to the United States pursuant to 8 U.S.C. 1157,
(d) Paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) for a period of at least one (1) year;
(e) An alien whose deportation is being withheld pursuant to:
   1. 8 U.S.C. 1253(h), as in effect prior to April 1, 1997; or
   2. 8 U.S.C. 1231(b)(3);
(f) Granted conditional entry pursuant to 8 U.S.C. 1153(a)(7) as in effect prior to April 1, 1980;
(g) An alien who is granted status as a Cuban or Haitian entrant pursuant to 8 U.S.C. 1522;
(h) Battered or subjected to extreme cruelty in the United States.

1. By a:
   a. Spouse or parent; or
   b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; and
   2. If:
   a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;
   b. There is a substantial connection between the battery or cruelty and the need for the benefit; and
   c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);
(ii) Classification pursuant to clause (ii) or (w) of 8 U.S.C. 1154(a)(1)(B);
(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1255(a)(3);
(iv) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States:

1. By:
   a. Spouse or parent of the alien without the active participation of the alien in the battery or cruelty; or
   b. Member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty; and
   2. If:
   a. The alien no longer resides in the household with the individual responsible for the battery or cruelty;
   b. There is a substantial connection between the battery or cruelty and the need for the benefit; and
   c. The alien has been approved or has a petition pending for:

(i) Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 U.S.C. 1154(a)(1)(A);
(ii) Classification pursuant to clause (ii) or (w) of 8 U.S.C. 1154(a)(1)(B);
(iii) Suspension of deportation and adjustment of status pursuant to 8 U.S.C. 1255(a)(3);
(iv) An alien who is lawfully residing in Kentucky and:
   1. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alenage;
   2. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303(d);[ed]
   3. The spouse or unmarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual pursuant to subparagraph 1 or 2 of the paragraph; or
   4. A veteran, a child of a veteran, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105;
   5. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;
   (k) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 U.S.C. 1101.
(13) [(14)] "Qualifying parent" means the parent who meets PLMA.
(14) [(15)] "Recipient" means an individual receiving K-TAP including a specified relative or a specified relative receiving on behalf of a child.

(15) [(46)] "Second chance home" means an entity that:

(a) Provides a minor teenage parent a supportive and supervised living arrangement; and
(b) Requires a minor teenage parent to learn:
   1. Parenting skills, including child development,
   2. Family budgeting;
   3. Health and nutrition; and
   4. Other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.
(16) [(15)] "Severe form of trafficking" is defined by 22 U.S.C. 7106.
(17) [(48)] [(46)] "Striker" means an employed individual who is participating in:

(a) A work stoppage;
(b) A concerted slowdown of work; or
(c) An interruption of operations at his place of employment.
(18) [(45)] [(43)] "Supplemental Security Income" or "SSI" means a monthly cash payment made pursuant to:

(a) 42 U.S.C. 1381 to 1385 to the aged, blind and persons with a disability;
(b) 42 U.S.C. 1382e; or
(c) 42 U.S.C. 1382.
(19) [20] [(10)] "Unemployed parent case" or "UP case" means K-TAP benefits paid to a family if both parents are in the home and at least one (1) parent is unemployed.

(20) [21] [(4)] "Work" means participation in a Kentucky Works component pursuant to 921 KAR 2 370, Section 2(2)(c).

Section 2. Eligible Parent. (1) An eligible parent shall include the natural, adopted, or adjudicated parent of the child.

(2) An adjudicated parent shall include an administrative establishment of the relationship.

(3) A stepparent shall not be an eligible parent.

Section 3. Age and School Attendance. (1) The definition of a "child", pursuant to Section 1(2) [(4)] of this administrative regulation, shall be met for at least one (1) person in the home.

(2) Verification of school attendance, Form PA-33D, "Child's Certification of School Enrollment/Attendance", shall be required for:
(a) Child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or
(b) Minor teenage parent pursuant to Section 19 [(45)](1) of this administrative regulation.

(3) Full- and part-time school attendance shall be defined pursuant to 921 KAR 2.016, Section 1.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in a month he is not attending because of:
(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 4. [5.] Enumeration. (1) A person included in the K-TAP case shall furnish his Social Security number or apply for a number if one (1) has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished.

(3) The cabinet shall assist an individual in making application for a Social Security number, if needed.

Section 5. [4.] Residence and Citizenship. (1) Residence. A resident shall be an individual who
(a) Is living in the state voluntarily and not for a temporary purpose; or
(b) Entered the state with a job commitment or seeking employment; and
2. [(6)] Is not receiving assistance funded by a block grant program pursuant to 42 U.S.C. 601 to 619 [et seq.] from another state.

(2) Citizenship.
(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP shall be provided only to a United States citizen.
(b) A qualified alien, pursuant to Section 1(12) [(43)] of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, pursuant to Section 1(12) [(43)] of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions shall apply to this provision:
1. An alien who is admitted to the United States as a refugee pursuant to 8 U.S.C. 1157;
2. An alien who is granted asylum pursuant to 8 U.S.C. 1158;
3. An alien whose deportation is being withheld pursuant to:
   a. 8 U.S.C. 1231(b), as in effect prior to April 1, 1997; or
   b. 8 U.S.C. 1231(b);
4. An alien who is lawfully residing in Kentucky and is:
   a. A veteran pursuant to 38 U.S.C. 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;
   b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 U.S.C. 5303A(d); or
   c. The spouse or unmarried surviving spouse if the marriage fulfills the requirements in 38 U.S.C. 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;
   d. A victim, a child of a victim, or spouse of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105;
   e. A parent or a sibling of a victim of a severe form of trafficking who is admitted to the United States pursuant to 22 U.S.C. 7105 and is under eighteen (18) years of age;
   f. An alien who is a Cuban and Haitian entrant pursuant to 8 U.S.C. 1522;
   g. An alien who is admitted to the United States as an American immigrant pursuant to 8 U.S.C. 1101;
   (c) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration, Form PA-14, "Declaration of Citizenship or Alien Status", shall cause the needs of the parent or other adult to be removed from the case.

Section 6. [5.] Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care pursuant to Section 1(6) of this administrative regulation.

(2) A specific deprivation factor, under Sections 7, 8, 9, or 10[(6) Sections 7, 8, 9, or 10] of this administrative regulation shall be verified for a child for whom assistance is approved.

Section 7. [6.] Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 8. [7.] Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent.

(a) Absence may be voluntary or involuntary.

(b) Voluntary absence shall include:
1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of:
   a. Thirty (30) days or more if the parent:
      (i) Voluntarily leaves; or
      (ii) Refuses to accept the child into his home; or
   b. Less than thirty (30) days if:
      (i) The child leaves the parent because the parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;
      (ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under a circumstance hazardous to the health or morals of the child;
      (iii) The child is voluntarily placed with a relative following a finding by the cabinet that the home is unsuitable;
      (iv) The child is placed by the court with a specified relative other than the parent;
      (v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or
      (vi) Both parents are absent from the home;
      5. Forced separation;

(b) Involuntary absence shall include:
1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation;

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be considered absent from the home.
Section 9. [8-] Deprivation Due to Incapacity. (1) A determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;
(b) Social;
(c) Economic.
(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.
(3) Incapacity shall exist in a case if the following criteria are met:
(a) It is medically determined that one (1) parent has a physical or mental disability, illness or impairment that:
   1. Was present at the time of application; and
   2. Has continued or is expected to last for a period of at least thirty (30) calendar days;
(b) The thirty (30) day period may include a period the claimant is undergoing:
   1. Planned diagnostic study; or
   2. Evaluation of rehabilitation potential; and
(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.
(4) A determination regarding incapacity shall be made by:
(a) Field staff if the following criteria are met:
   1. The parent declares physical inability to work;
   2. The worker observes some physical or mental limitation; and
   3. The parent:
      a. Is receiving SSI;
      b. Is age sixty-five (65) or over;
      c. Has been determined to meet the definition of blindness pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by the Social Security Administration;
      d. Has been determined to meet the definition of permanent and total disability pursuant to 42 U.S.C. 1382c or 42 U.S.C. 416 by either the:
         (i) Social Security Administration; or
         (ii) Medical review team of the cabinet;
(b) A medical review team if the criteria in (4)(a) are met:
   1. The individual has been hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, a statement from the physician shall be requested to indicate if incapacity existed as of the application date;
   2. Is recovering from surgery, illness or injury that requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. A period longer than six (6) weeks shall be determined through the medical review team;
   3. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer;
   4. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement; or
   5. The medical review team, consisting of a licensed physician and a social worker employed by the cabinet, if a determination by field staff is precluded.
(5) The factors to be considered by the medical review team in making the medical determination shall include:
(a) The claimant's medical history and subjective complaint regarding an alleged physical or mental disability, illness or impairment, and
(b) Competent medical testimony relevant to whether:
   1. A physical or mental disability, illness or impairment exists; and
   2. The disability, illness or impairment is:
      a. Sufficient to reduce the parent's ability to support or care for a child; and
      b. Likely to last thirty (30) days.
(6) The factors to be considered in making the nonmedical evaluation shall include:
(a) The claimant's:
   1. Age;
   2. Employment history;
   3. Vocational training;
   4. Educational background; and
   5. Subjective complaint regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and
(b) The extent and accessibility of employment opportunity available in the claimant's area of residence.
(7) In determining the extent and accessibility of available employment opportunity, the limited employment opportunity of an individual with a disability shall be taken into account as follows:
(a) Available printed materials that provide information regarding available employment opportunity shall be researched,
(b) The local Office of Employment and Training [Department for Employment Service] office shall be contacted regarding accessibility of employment opportunity within the claimant's area of residence, and
(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.
(8) A written report shall be made of the determination under this section.
(9) A claimant shall be provided timely and adequate notice of an opportunity for a fair hearing pursuant to 921 KAR 2.055.

Section 10. [9-] Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent if both parents are in the home shall be based on the determination that the qualifying parent meets the criteria of unemployment pursuant to subsection (3) of this section and has a PLMA, pursuant to Section 1(11) [42] of this administrative regulation.
(2) The qualifying parent designation shall remain with the same parent as long as assistance is received on the basis of the same application.
(3) A parent shall be considered to be unemployed if employed:
(a) Less than 100 hours in a calendar month; or
(b) In excess of 100 hours in a particular month if the employment is intermittent and the excess is of a temporary nature if the parent:
   1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and
   2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.
(4) The 100 hour requirement for unemployment in subsection (3) of this section shall apply to a K-TAP applicant.
(5) PLMA shall be established if the parent:
(a) Attests to the amount of earnings pursuant to Section 1(11) [42] of this administrative regulation by signing a completed Form PA-1C Supplement D, "Qualifying Parent Eligibility" with the following requirements:
   1. Gross income from self-employment and farming shall qualify as earned income in determining PLMA; and
   2. The self-employed individual shall not have to realize a profit to meet this requirement;
(b) Within twelve (12) months prior to application, received unemployment compensation; and
(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.
(6) In determining whether or not criteria in subsection (5) of this section is met, two (2) semesters of full-time school attendance, as defined by the school or institution, may be substituted.
VOLUME 32, NUMBER 1 – JULY 1, 2005

for $500 of the $1000 earnings
(7) Unemployment shall not exist if the qualifying parent:
(a) Is on strike;
(b) Is temporarily unemployed.
1. Due to weather condition or lack of work;
2. If there is a job to return to, and
3. Return can be anticipated within thirty (30) days or at the
end of a normal vacation period,
(c) Is unavailable for full-time employment;
(d) Is under contract for employment, unless a written state-
ment from the employer verifies that the individual is subject to
release from the contract if full-time employment is secured;
(e) Has not met the criteria of unemployment for at least thirty
(30) days;
(f) Is not:
1. Registered for work pursuant to 921 KAR 2.370, Section
4(3);
2. Subject to Kentucky Works, pursuant to 921 KAR 2:370; or
(g) Has refused a bona fide offer of employment or training for
employment without good cause, pursuant to 921 KAR 2.370,
Section 6(1), in the thirty (30) days prior to UP eligibility or during
the course of receipt of UP benefits.

Section 11.[10] Living with a Specified Relative. (1) To be
eligible for K-TAP, a needy child shall be living in the home of
a relative as follows:
(a) A blood relative, including a relative of the half-blood;
(b) A person listed in paragraph (a) of this subsection if the
alleged father has had relationship established through the admin-
istrative determination process pursuant to Section 12[14] of
this administrative regulation;
(c) An adoptive parent, the natural and other legally adopted
child and other relative of the adoptive parent; or
(d) A relative by marriage, even if the marriage may have ter-
minted, if termination occurred after the birth of the child:
1. A couple that has been considered married by a state with a
common-law marriage provision shall be considered married in
Kentucky for K-TAP eligibility purposes; and
2. The statement of the applicant or recipient that the couple's
marriage recognized from another state as a common-law mar-
riage shall be accepted as verification by the cabinet.
(2) Cash assistance shall not be provided for a child who is
absent, or expected to be absent, from the home for a period of
thirty (30) consecutive days or more unless good cause exists.
Good cause for absence, or expected absence, of the child from
the home for a period of thirty (30) consecutive days or more, shall
exist if the parent continues to exercise care and control of the
child and the child is absent due to:
(a) Medical care;
(b) Attendance at school including boarding school;
(c) College or vocational school;
(d) Emergency foster care, as verified by the cabinet; or
(e) A short visit with a friend or relative if it is intended that the
child will return to the home and the parent or specified relative
maintains parental control of the child.
(3)(a) A child shall be removed from the benefit group the first
administratively feasible month following thirty (30) consecutive
days from the date the child is placed in emergency foster care.
(b) If the only eligible child in the benefit group is absent due to
emergency foster care, the otherwise eligible parent or parents in
the benefit group shall:
1. [If no other eligible child is in the benefit group.] Be dis-
continued the first administratively feasible month following sixty
(60) days from the date the child is placed in emergency foster care
if no other eligible child is in the benefit group.
2. [If all other eligible child is in the benefit group.] Be dis-
continued the first administratively feasible month following sixty
(60) days from the date the child is placed in emergency foster care
if no other eligible child is in the benefit group.
(4) (a) If a specified relative fails to notify the cabinet of a thirty
(30) consecutive day or more absence of the child for a reason
other than one (1) of the good cause reasons listed in subsection
(2) of this section, the specified relative shall not be eligible for his
share of K-TAP benefits during the period of the child's unreported
absence of thirty (30) consecutive days or more.
(b) Ineligible benefits received by the specified relative and
child during the period of the child's unreported absence of thirty
(30) consecutive days or more shall be recouped pursuant to Sec-
tion 11[40] of 921 KAR 2.016.

Section 12.[11] Administrative Establishment of Relationship.
(1) An administrative determination of relationship as established
in this administrative regulation shall be used only to establish rela-
tionship for K-TAP eligibility if the following type of evidence is
present:
(a) A birth certificate listing the alleged parent;
(b) Legal document which shall include:
1. Hospital record;
2. Juvenile court record;
3. Will; or
4. Other court record that clearly indicates the relationship of
the alleged parent or relative;
(c) Receipt of statutory benefits as a result of the alleged par-
ent's circumstance;
(d) Documents declaring voluntary paternity as specified
in 901 KAR 5:070, Section 1; or [VS-8 "Declaration of Paternity;
(e) VS-8B "Voluntary Acknowledgment;"
(f) VS-8C "Three-Way Paternity Affidavit;" or
(e) [g] A sworn statement or affidavit of either parent ac-
knowledging relationship plus one (1) of the following:
1. School record,
2. Bible record,
3. Immigration record;
4. Naturalization record;
5. Church document, such as baptismal certificate;
6. Passport;
7. Military record;
8. U.S. Census record, or
9. Notarized statement or affidavit from an individual having
specific knowledge about the relationship between the alleged
parent and child.
(2) Rebuttal of administrative relationship shall occur if the
parent or, in the absence of the parent, the caretaker relative:
(a) Alters the evidence pursuant to subsection (1)(a) or (b) of
this section is erroneous;
(b) Provides substantiation of the erroneous information; and
(c) Provides a notarized statement or affidavit:
1. Acknowledging the erroneous information; and
2. Containing the correct information on the actual alleged
parent.
(3) Presence of the notarized statement or affidavit pursuant to
subsection (2)(c) of this section shall serve as rebuttal to the evi-
dence present in subsection (1)(a) or (b) of this section and a
determination of relationship shall not be acknowledged.

Section 13.[12] One (1) Category of Assistance. (1) A child or
adult relative shall not be eligible for K-TAP if receiving SSI.
(2) If a child who receives [receive] SSI meets the K-TAP re-
quirements of age, deprivation and living in the home of a specified
relative, the specified relative shall be approved for K-TAP if all
other eligibility factors are met.
(3) If a child who receives foster care benefits meets the K-
TAP requirements of age, deprivation and living in the home of a
specified relative, the specified relative shall be approved for K-
TAP if all other eligibility factors are met.

Section 14.[13] Strikers. (1) A family shall be ineligible for
benefits for a month the parent, with whom the child is living on the
last day of the month, is participating in a strike.
(2) A specified relative other than the parent shall be ineligible for
benefits for a month if, on the last day of the month, the relative is
participating in a strike.

Section 15.[14] Work Registration. An adult applicant or re-
cipient of the K-TAP benefit group shall register for work pursuant
921 KAR 2.370, Section 4(3).

Section 16.[15] Kentucky Works. The technical requirements
for participation in the Kentucky Works Program shall be pursuant
to 921 KAR 2.370. [The cabinet shall provide Form-PA-219, "Ken-
Cooperation in Child Support Activities. (1) The Department for Community Based Services shall attempt to secure parental support, and if necessary establish paternity, for a child receiving assistance pursuant to Section 1 (1) of this administrative regulation, who has a parent absent from the home due to: (a) Divorce; (b) Desertion; (c) Birth out-of-wedlock; (d) Legal separation; (e) Forced separation; or (f) Marriage annulment.

(2) With the exception of a good cause reason, pursuant to subsections (4) and (5) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be dependent upon the applicant's or recipient's cooperation in child support activities that shall include: (a) Identifying the noncustodial parent or obligor; (b) Providing information to assist in the: 1. Location of the noncustodial parent or obligor; 2. Enforcement of a child support order; or 3. Review or modification of a child support order; (c) Establishing, modifying or enforcing a child support order; and (d) Forwarding a child support payment received to the state's centralized collection agency.

(3)(a) The cabinet shall provide written notice, Form CS-333, "Facts About the Child Support Program for K-TAP and Kinship Care Recipients", to the applicant or recipient, regarding the individual's right to file a good cause claim for refusing to cooperate in a child support activity. (b) The cabinet shall provide Form CS-333.1, "Facts About the Right to Claim Good Cause", to an applicant or recipient who: 1. Requests additional information regarding the criteria for filing a claim; or 2. Files a good cause claim for refusing to cooperate in a child support activity.

(4) The applicant or recipient shall be excused from penalty for failure to cooperate with a child support activity, pursuant to subsection (2) of this section, if one (1) of the following criteria is met: (a) Cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the: 1. Child, or 2. Caretaker relative to an extent that it would reduce the capacity to care for the child adequately; (b) The child was conceived as a result of incest or forcible rape and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; (c) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or (d) The applicant or recipient is being assisted by a public or licensed private social service agency to resolve whether to keep the child or release him for adoption if: 1. Discussion has not gone on for more than three (3) months; and 2. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim, Part I of Form PA-121, "Good Cause Claim/Determination", is filed to provide evidence to substantiate the claim.

(a) Evidence used to determine good cause shall include: 1. Birth certificate, medical information, or law enforcement record indicating that the child was conceived as a result of incest or forcible rape; 2. Court document or other record indicating legal proceedings for adoption of the child by a specific family is pending before a court of competent jurisdiction; or 3. Record or other evidence indicating the noncustodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

(b) A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or

(c) Notarized statement from an individual, other than the applicant or recipient, with knowledge of the circumstances that provides the basis for the good cause claim.

(d) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered: 1. The present emotional state of the individual subject to emotional harm; 2. The emotional health history of the individual; 3. The extent and probable duration of the individual's emotional impairment; and 4. The extent of involvement required by the individual in establishing paternity or enforcing a support obligation.

(e) If the cabinet conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

(f) If it is necessary for the cabinet to contact the noncustodial parent or obligor, or the alleged parent during the investigation of a good cause claim, the worker shall notify the applicant or recipient of the proposed contact to: 1. Obtain permission for the contact; or 2. Enable the applicant or recipient to: a. Present additional evidence or information so that the contact shall be unnecessary; b. Withdraw the application for assistance or request discontinuation of K-TAP; or c. Have the good cause claim denied.

(g) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the cabinet shall: (a) Document the case; (b) Determine that good cause: 1. Exists and a support activity cannot be initiated without endangering the: a. Best interests of the child; or b. Physical or emotional health of the child or the relative; or 2. Does not exist; (c) Advise the applicant or recipient in writing, Part II of Form PA-121, "Good Cause Claim/Determination", of the result of the good cause claim determination; and (d) Identify each case that good cause is established, but may be subject to change, for subsequent review.

(h) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the cabinet: (a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 9 (8) of 921 KAR 2.016; and (b) The cabinet shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(i) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the cabinet shall: (a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely; (b) Remove the protective payee from the case; and (c) Not authorize a back payment for the period the individual did not cooperate.

(j) As a condition of eligibility for assistance, each applicant
for, or recipient of, K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205 720(1). The assignment shall:
(a) Include all members of the case for whom support rights apply; and
(b) Be completed at the time of application for K-TAP benefits.

Section 18, [47] Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive another benefit if potential entitlement exists.
(2) Failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP.
If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 19, [48] Minor Teenage Parents. (1) A minor teenage parent [including a married-parent] under the age of eighteen (18) living with the spouse shall participate in an educational activity directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the individual has:
(a) A minor child at least twelve (12) weeks of age in his care; and
(b) Not completed a high school education (or its equivalent).
(2) Except pursuant to subsection (4) of this section, a minor teenage parent and his minor child shall reside in:
(a) A place of residence maintained by:
   1. A parent;
   2. A legal guardian; or
   3. An adult relative pursuant to Section 11 [49] of this administrative regulation, or
(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.
(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if the:
(a) Minor teenage parent does not have a
   1. Parent, legal guardian or appropriate adult relative pursuant to Section 11 [49] of this administrative regulation who is living or whose whereabouts is known; or
   2. Living parent, legal guardian, or other appropriate adult relative pursuant to Section 11 [49] of this administrative regulation who;


   a. Otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent; and
   b. [who] Would allow the minor teenage parent to live in the home of the parent, guardian, or relative pursuant to Section 11 [49] of this administrative regulation; or
(b) Cabinet determines:
   1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent’s own parent or legal guardian; or
   2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent’s own parent or legal guardian.
(4) The requirement in subsection (2) of this section shall be waived if the cabinet determines:
(a) Living in the place of residence maintained by the parent, legal guardian, or adult relative pursuant to Section 11 [49] of this administrative regulation is not in the best interest of the minor child taking into consideration the needs of the minor child; or
(b) The minor teenage parent’s current living arrangement is inappropriate.
(5) If a circumstance changes and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a “Teen Parent Personal Responsibility Plan”, form PA-202TP.
(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with a provision found in this section, payment to a protective payee shall continue for the eligible child of the minor teenage parent.
(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent’s current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative pursuant to Section 11 [49] of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 20, [49] Benefit Time Limits. (1) K-TAP, or any other assistance from a federally-funded program pursuant to 42 U.S.C. 601 to 619 [tel-seg] shall not be provided for more than sixty (60) cumulative months to a benefit group, as defined by [pursuant to] Section (2) of 921 KAR 2.016, that includes:
(a) An adult;
(b) A minor teenage parent pursuant to Section 19 [48](6) of this administrative regulation; or
(c) A fugitive or drug felon not eligible pursuant to Section 22 or 23 [21 or 22] of this administrative regulation, includes an adult, or teenage parent-pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program [funded pursuant to 42 U.S.C. 601 et seq., whether or not consecutive]; [includes an adult, or teenage parent-pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a federally-funded program funded pursuant to 42 U.S.C. 601 et seq., whether or not consecutive] (2) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:
(a) Is battered or subjected to extreme cruelty. During the extension period the individual shall have an individual service plan pursuant to Section 24 [23] of this administrative regulation,
(b) Has a physical or mental disability, as defined in Section 9 [8](3)(a), (b) and (c) of this administrative regulation, as determined by the cabinet. During the extension period, the individual shall comply with:
1. Treatment or other activity recommended by the referral source and approved by the cabinet, as required by the Kentucky Works Program pursuant to 921 KAR 2.370, Sections 2(2)(c)13 and 2(2); and
2. Child support cooperation requirements pursuant to Section 17 [16] of this administrative regulation;
(c) is required to provide constant care for at least six (6) hours daily for a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available.
2. During the extension period, the individual shall comply with child support cooperation requirements pursuant to Section 17 [16] of this administrative regulation;
(d) Is a grandparent or other relative, except for a parent, caring for an eligible child who would otherwise be placed in foster care. The caretaker relative shall continue to comply with:
1. Child support cooperation requirements pursuant to Section 17 [16] of this administrative regulation; and
2. Except for a caretaker relative age sixty (60) or over, Kentucky Works requirements pursuant to 921 KAR 2.370 if the caretaker relative is included in the benefit group;
(e) Is an adult with insufficient employment opportunities, as determined by the cabinet, who:
1. Has complied with:
   a. Kentucky Works requirements pursuant to 921 KAR 2.370; and
   b. Child support cooperation requirements pursuant to Section 17 [16] of this administrative regulation; and
2. During the extension period, shall:
   a. Comply with:
(i) Kentucky Works requirements pursuant to 921 KAR 2:370;
(ii) Child support cooperation requirements pursuant to Section 17 [46] of this administrative regulation;
(iii) Employment opportunities and activities listed on the KWS 202, Transitional Agreement, pursuant to 921 KAR 2:370, Section 4(2); and
(iv) Work registration requirements pursuant to 921 KAR 2:370, Section 4(3); and
b. Not quit or refuse a job without good cause pursuant to 921 KAR 2:370, Section 6; and
3. Shall be limited to an extension period of six (6) consecutive months; or
   (f) 1. Received a domestic violence exemption pursuant to Section 24 [23][2] of this administrative regulation, up to the number of months the individual received K-TAP during the domestic violence exemption.
   2. During the extension period, the individual shall comply with:
   a. [4] Child support cooperation requirements pursuant to Section 17 [46] of this administrative regulation; and
3. If otherwise eligible, a benefit group containing a member who has lost a job, through no fault of the recipient, within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) consecutive month extension of the time limitation.
4. A benefit group that receives an extension to the sixty (60) month time limit shall be reviewed:
   a. Every six (6) months for an extension pursuant to subsection (2)(a), (c), or (f) of this section;
   b. Every three (3) months for an extension pursuant to subsection (2)(e) of this section;
   c. Every three (3) months or the medical review team review period for an extension pursuant to subsection (2)(b) of this section; or
   d. Annually for an extension pursuant to subsection (2)(d) of this section.
5. The cabinet shall send a notice containing a list of the hardship extensions, pursuant to subsection (2) of this section, to a benefit group nearing the sixty (60) month time limit.
6. A benefit group discontinued from K-TAP due to reaching the sixty (60) month time limitation shall receive a notice pursuant to 921 KAR 2:046, Section 4.
7. The cabinet shall conduct a review at least two (2) months prior to the expiration of the sixty (60) month time limit to:
   a. Determine if the benefit group meets criteria established for a hardship extension pursuant to subsection (2) of this section; and
   b. Inform the benefit group of Safety Net Services, pursuant to 922 KAR 1:400, Section 5.
8. K-TAP [23][2] must be provided to a benefit group pursuant to Section 2(1) of 921 KAR 2:016, that includes an adult, or minor, child or children parent pursuant to Section 19(19)(3) of this administrative regulation, who has:
   1. Received six (6) cumulative months of K-TAP assistance; and
   2. Been penalized for failure to cooperate in Kentucky Works, pursuant to 921 KAR 2:370, a period of three (3) cumulative months;
   b. An adult or minor teenager parent in paragraph (a) of this subsection shall receive assistance if the individual:
      1. Demonstrates cooperation in Kentucky Works pursuant to 921 KAR 2:370;
      2. Meets the technical requirements established in this administrative regulation; and
      3. Meets the standard of need in accordance with 921 KAR 2:016. [Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in an approved work activity, if available, pursuant to Section 1(19) of this administrative regulation;
      a. The twenty-four (24) month limitation shall not be applied until the individual has been penalized for failure to participate in Kentucky Works, pursuant to 921 KAR 2:370, Section 7, for a period of six (6) cumulative months;]
      9. Time limitations shall apply to a:
Section 25. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "PA-1C Supplement D, [Q]Qualifying Parent Eligibility, edition 6/05 [6/06];
(b) "PA-14, [D] Declaration of citizenship or Alien Status, edition 6/05 [6/06];
(c) "PA-33D, [Q] Child's Certification of School Enrollment/Attendance, edition 6/05 [6/06];
(d) "PA-121, [Q] Good Cause Claim/Determination, edition 6/05 [6/06];
(e) "PA-202TP, [Q] Teen Parent Personal Responsibility Plan, edition 6/05 [6/06];
(f) "PA-210, "Kentucky Works Program Fact Sheet, edition 4/08.

(g) CS-333, [Q] Facts About the Child Support Program for K-TAP and Kinship Care Recipients, edition 6/05 [6/06]; and

(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.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE ROBINSON, Commissioner
DUANE L. KILTY, Jr., Ph.D., Undersecretary

APPROVED BY AGENCY: May 10, 2005
FILED WITH LRC: May 10, 2005 at 4 p.m.

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COUNCIL ON POSTSECONDARY EDUCATION  
(Amended After Comments)

43 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

RELATES TO KRS Chapter 138, 164.020, 164.030, 184A.330(6)

STATUTORY AUTHORITY: KRS 164.020(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(6) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution and authorizes the council to set different tuition amounts for residents of Kentucky and for nonresidents. This administrative regulation establishes the procedures and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution.

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single consolidated summer term as defined by the institution.

(2) "Clear and convincing evidence" means proof beyond a well-founded doubt and that which produces in the mind of the person a firm belief or conviction.

(3) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, including serious personal illness or injury, or illness or death of a parent.

(4) [33] "Degree level" means enrollment in a course or program which could result in the award of:

(a) Certificate, diploma or other program award at an institution;

(b) Baccalaureate degree or lower including enrollment in a course by a nondegree-seeking postbaccalaureate student;

(c) Graduate degree or graduate certificate other than a first-professional degree in law, medicine, dentistry or "Pharm. D.;" or

(d) Professional degree in law, medicine, dentistry, or "Pharm. D.;"

(5) [43] "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by clear and convincing [a-preponderance-of-the] evidence that a person is domiciled in Kentucky and is a resident of Kentucky.

(6) [60] "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria established in Section 5 of this administrative regulation.

(7) [66] "Determination of residency status" means the decision of a postsecondary education institution that may include a formal hearing that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(8) [73] "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain indefinitely, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(9) [90] "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(10) [100] "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who can meet the criteria established in Section 5 of this administrative regulation.

(11) [109] "Institution" means an entity defined in KRS 164.001(11) if the type of institution is not expressly stated and includes the Kentucky Virtual University, the Council on Postsecondary Education, and the Kentucky Higher Education Assistance Authority.

(12) [132] "Kentucky resident" means a determination by an institution that a person is domiciled in and is a resident of Kentucky as determined by this administrative regulation.

(13) [142] "Nonresident" means a person who is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who is not a Kentucky resident within the meaning of this administrative regulation.

(14) [143] "Parent" means one (1) of the following:

(a) A person's father or mother;

(b) A court-appointed legal guardian if:

1. The guardianship is recognized by an appropriate court within the United States;

2. There was a relinquishment of the rights of the parents; and

3. The guardianship was not established primarily to confer Kentucky residency on the person.

(15) "Preponderance of the evidence" means the greater weight of evidence, or evidence which is more credible and convincing to the mind.

(16) "Residence" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(17) "Sustenance" means living expenses including room, board, maintenance, transportation, and also includes [may include] educational expenses including tuition, fees, books, and supplies.

Section 2. Scope. (1) State-supported postsecondary education institutions were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary education is predicated on the proposition that the benefits received significantly hinge upon the existence of an educated citizenry. As a matter of policy, access to postsecondary education shall be provided so far as feasible at reasonable cost to an individual who is domiciled in Kentucky and who is a resident of Kentucky. This administrative regulation sets forth the criteria that are to be evaluated and the processes employed to determine whether or not a student is, in fact, a resident of Kentucky for the purpose of determining entitlement to the benefits of postsecondary education that are afforded to all bona fide Kentucky residents. The intent of a person seeking to establish domicile represented by his or her actions shall be the primary issue in a determination of residency. [An evaluation of an individual's information shall be directed at determining whether the person is domiciled in and is a resident of Kentucky].

(2) The Council on Postsecondary Education may require a student who is neither domiciled in nor a resident of Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) This administrative regulation applies to all student residency determinations regardless of circumstances, including residency determinations made by the state-supported institutions for prospective and currently-enrolled students; the Southern Regional Education Board contract spaces programs; reciprocity agreements, where appropriate; the Kentucky Virtual University programs and services, where appropriate; academic common market programs; the Kentucky Educational Excellence Scholarship Program; and other state student financial aid programs, as appropriate.
Section 3. Determination of Residency Status; General Rules.
(1) A determination of residency shall include:
(a) An initial determination of residency status by an institution during the admission process or upon enrollment in an institution for a specific academic term or for admission into a specific academic program;
(b) A reconsideration of a determination of residency status by an institution based upon a changed circumstance; and
(c) A formal hearing conducted by an institution upon request of a student after other administrative procedures have been completed.
(2) An initial determination of residency status shall be based upon:
(a) The facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the Institution;
(b) Information derived from admissions materials;
(c) Other materials required by an institution [and which are] consistent with this administrative regulation; or
(d) Other information available to the Institution from any source.
(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by clear and convincing [a preponderance of the] evidence.
(4) A determination of residency status shall be based upon verifiable circumstances or actions.
(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.
(6) A student classified as a nonresident shall retain that status until [the student is] officially reclassified by an institution
(7) A student may apply for a review of a determination of residency status once for each academic term.
(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.
(9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.
(10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institutional official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status. The penalty may also include:
(a) Student discipline by the institution through a policy written and disseminated to students; or
(b) Criminal prosecution.

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that a person is a nonresident if:
(a) A person is, or seeks to be, an undergraduate student and admissions records show the student to be a graduate of an out-of-state high school within two [five (5)] years prior to a request for a determination of residency status;
(b) A person's admissions records indicate the student's residence to be outside of Kentucky at the time of application for admission;
(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution;
(d) A person moves to Kentucky and within twelve (12) months enrolls at an institution more than half time; or
(e) A person has a continuous absence of one (1) year from Kentucky.
(2) A student shall be given the opportunity to show, by clear and convincing evidence, that a presumption arising from subsection (1) of this section is incorrect and that the student [shall be overcome by presentation of evidence that is sufficient to demonstrate that a person is domiciled in and is a resident of Kentucky].
(3) Provided, however, an institution shall comply with the provisions of KRS 164.020(8).

Section 5. Determination of Whether a Student is Dependent or Independent.
(1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent and therefore lacks the ability to form the requisite intent to establish domicile.
(2) In determining the dependent or independent status of a person, the following information shall be considered as well as other relevant information available at the time the determination is made:
(a) Whether the person has been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status, or
2. Whether the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and
(b) Whether the person has financial earnings and resources independent of a person other than an independent spouse necessary to provide for the person's own sustenance.
(3) The financial resources from student financial aid may be considered in a determination of whether a student is independent, but also may be considered in determining whether a student is present in Kentucky primarily for an educational purpose.
(4) An individual who enrolls at an institution immediately following graduation from high school and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the information submitted.
(5) Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.
(6) Marriage to an independent person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.
(7) Financial assistance from a loan made by a parent or family member other than an independent spouse, if used for sustenance of the student:
(a) Shall not be considered in establishing a student as independent; and
(b) Shall be a factor in establishing that a student is dependent.
(5) A student shall be allowed to provide, and have considered, information concerning a determination that a person is dependent or independent.

Section 6. Effect of a Determination of Dependent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be:
(a) The domicile and residency of a dependent person shall be the same as either parent.
(b) The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.
(2) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be Kentucky if either parent is domiciled in and is a resident of Kentucky regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to federal or Kentucky income tax provisions.
(a) If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky but subsequently move from the state, the dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled.
(b) If continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed whenever the circumstances detailed in subparagraph 1 of this paragraph are present.

Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on Determination of Residency Status. (1) A member, spouse, or dependent of a member whose
domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the time of active service; or
(b) If the member, spouse, or dependent returns to this state within six (6) months of the date of the member's discharge from active duty.

(2) A member, spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to those orders if the member is not.

1. Stationed in Kentucky for the purpose of enrollment at an institution;
or
2. On temporary assignment of less than one (1) year.

(b) A member, spouse or dependent of a member, shall not lose Kentucky residency status if the member is thereafter transferred on military orders while the member, spouse or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3) Membership in the National Guard or civilian employment at a military base alone shall not qualify a person for Kentucky residency status under the provisions of subsections (1) and (2) of this section.

(4) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration. (1) A person holding a nonresident visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H-1, H-4 if accompanying a person with an H-1 visa, I, K, L, N, R, shall establish domicile and residency the same as another person.

(3)(a) An independent person holding a nonimmigrant visa with designation B, C, D, F, H-2, H-3, H-4 if accompanying a person with an H-2 or H-3 visa, J, M, O, P, Q, S, TD or TN shall not be classified as a Kentucky resident, because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot meet the intent necessary to establish domicile within the meaning of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(8).

Section 10. Criteria Used in a Determination of Residency Status. (1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts essential to the determination of domicile and residency.

(b) A person shall not be determined to be a Kentucky resident by the performance of an act incidental to fulfilling an educational purpose or by an act performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

(c) A person shall respond to all requests by an institution for information and documents.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency:

(d) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(e) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the start of the academic term for which a classification of Kentucky residency is sought;

(f) Financially self-sufficient student in Kentucky;

(g) Full-time employment of at least one (1) year while living in Kentucky;

(h) [Attendance as a full-time, nonresident student at an out-of-state institution based on a determination by that school that the person is a resident of Kentucky];

(i) [Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with application to or attendance at an institution following and incidental to change in domicile and residency];

(j) [Obtaining licensing or certification for a professional and occupational purpose in Kentucky];

(k) [Continued presence in Kentucky during academic breaks]; and

(l) [Financial aid or other support provided by an employer in Kentucky].

The extent to which a student maintains his or her residence in Kentucky during academic breaks; and

The extent to which a student is dependent on student financial aid in order to provide basic sustenance may be considered in determining that a student is primarily in Kentucky for the purpose of receiving an education and thus lacks the requisite intent to be domiciled in Kentucky.

(3) Except as provided in subsection (4) of this section, the following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that
a person is domiciled in and is a resident of Kentucky:
(a) Kentucky automobile registration;
(b) Kentucky driver’s license; and
(c) Registration as a Kentucky voter.
(4) However, the absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.
(5) A person shall not be determined to be a Kentucky resident by the performance of an act which is incidental to fulfilling an educational purpose or by an act performed as a matter of convenience. More physical presence in Kentucky, including living with a relative or friend, shall be sufficient evidence of domicile and residence. A person shall respond to all information requested by an institution.

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency status of a parent or parents of a dependent person changes, an institution shall reassess residency either upon a request by the student or a review initiated by the institution.
(2) Upon transfer to a Kentucky institution, a student’s residency status shall be assessed by the receiving institution.
(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Student Responsibilities. (1) A student shall report under the proper residency classification which includes the following actions:
(a) Raising a question in a timely manner concerning residency classification,
(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution;
(c) Notifying the designated office or person at the institution immediately upon a change in residency.
(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student’s residency status.
(3) (a) If a student fails to provide, by the date specified by the institution, information and documents required by an institution in a determination of residency status, the student shall be notified by the institution that the review has been canceled and that a determination has been made.
(b) Notification shall be made by registered mail, return receipt requested.
(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.
(4) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution is because a student has failed to meet published deadlines for the submission of documents and information as set forth in subsection (2) of this section. A student may request a review of a determination of residency status in a subsequent academic term.
(5) A determination by an institution that a person is a resident for purposes of tuition assessment shall apply to the tuition assessment for the academic term in which an application for review was made, but may not be applied retroactively.

Section 13. Institutional Responsibilities. Each institution shall:
(1) Establish and publish a deadline within thirty (30) calendar days of the first day of class for submission of an application for review along with full documentation. Applications filed more than thirty (30) calendar days after the first day of class shall not be considered for that term.
(2) Applications shall not be considered retroactively for past terms.
(3) Provide for an administrative appeals process that includes a residency appeals officer to consider student appeals of an initial residency determination and which shall include a provision of fourteen (14) days for the student to appeal the residency appeals officer’s determination.
(4) (c) Establish a residency review committee to consider appeals of residency determinations by the residency appeals officer. The residency review committee shall make a determination of student residency status and notify the student in writing within forty-five (45) days after receipt of the student appeal.
(5) (d) Establish a formal hearing process as described in Section 14 of this administrative regulation, and
(6) (e) Establish written policies and procedures for administering the responsibilities established in subsections (1), (2), and (3) of this section and that are:
(a) Approved by the institution’s governing board;
(b) Made available to all students; and
(c) Filed with the council.

Section 14. Formal Institutional Hearing. (1) A student who appeals a determination of residency by a residency review committee shall be granted a formal hearing by an institution if the appeal is made by a student in writing within fourteen (14) calendar days after notification of a determination by a residency review committee.
(2) If a request for a formal hearing is received, an institution shall appoint a hearing officer to conduct a formal hearing. The hearing officer:
(a) Shall be a person not involved in determinations of residency at an institution except for formal hearings;
(b) Shall not be an employee in the same organizational unit as the residency appeals officer.
(3) An institution shall have written procedures for the conduct of a formal hearing that have been adopted by the board of trustees or regents, as appropriate, and that provide for:
(a) A hearing officer to make a recommendation on a residency appeal;
(b) Guarantees of due process to a student that include:
   1. The right of a student to be represented by legal counsel; and
   2. The right of a student to present information and to present testimony and information in support of a claim of Kentucky residency; and
   A recommendation to be issued by the hearing officer.
(4) An institution’s formal hearing procedures shall be filed with the Council on Postsecondary Education and shall be available to a student requesting a formal hearing.

Section 15 Cost of Formal Hearings. (1) An institution shall pay the cost for all residency determinations including the cost of a formal hearing.
(2) A student shall pay for the cost of all legal representation in support of the student’s claim of residency.

THOMAS D. LAYZELL, President
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 14, 2005 at 2 p.m.
CONTACT PERSON: Dennis L. Taubee, Associate Vice President General Counsel, Council on Postsecondary Education, Suite 250, 1024 Center Drive, Frankfort, Kentucky 40601, phone (502) 573-1555 ext. 142, fax (502) 573-1556, email dennis.taubee@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dennis L. Taubee
(1) Provide a brief summary of:
(a) What this administrative regulation does: Sets forth the rules and the processes whereby students may be classified by state supported institutions as resident or nonresident students for admissions or tuition assessment.
(b) The necessity of this administrative regulation: KRS 164.020(8) requires the council to determine tuition rates for the state supported postsecondary education institutions. The council has determined that there shall be a differential rate for resident and nonresident students. The administrative regulation establishes the process by which students are classified and assessed the proper tuition.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the enabling statute, KRS 164.020(8) by providing direction to
institutions so that students may be properly classified.

d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This admin-
istrative regulation provides clear direction to both students and
institutions as to how a determination of resident or nonresident
status is to be made, the criteria that are to be examined, and the
procedures to be followed.

c) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The council and the institutions periodically review the
residency activity and recommend changes to the administrative regulation to provide guidance to the Institutions and to students
applying for a change in residency status. The suggested changes
clarify the role that marriage to a Kentucky resident has on the
status of a student, change the relative value of certain criteria that
are used to determine residency, change the evidentiary burden
from a preponderance of the evidence to a clear and convincing
standard, and change the manner in which undocumented aliens
may secure Kentucky residency.

(b) The necessity of the amendment to this administrative
regulation: The council and the council believe, based on the
residency activity experienced since 2002, that these changes will
clarify the rules and simplify the review process.

c) How the amendment conforms to the content of the
authorizing statutes: These changes conform to the authorizing
statute.

d) How the amendment will assist in the effective administra-
tion of the statutes: By clarifying the application of the rules, the
administration of residency determinations will be simplified.

(e) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: Students who seek a change in residency status,
the 8 public postsecondary education institutions, and the Ken-
tucky Community and Technical College System.

(f) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: The
proposed changes clarify the evidence that is required for a stu-
dent to be successful in securing a change in residency status. The
institutions should see that the process is simplified.

(g) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: No cost.
(b) On a continuing basis: No cost.

(h) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: N/A

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

(j) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: No, fees are
not involved.

(k) TIERING: Is tiering applied? Tiering is not appropriate under
these circumstances

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Environmental Protection
Division of Water
(Amended After Comment)

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

RELATES TO: KRS 151.110, 151.112, 151.114, 151.116,
151.120, 151.182, 151.200, 151.210, 151.220 [461-440-1460-160]
STATUTORY AUTHORITY: KRS 151.125, 151.140, 151.150,
151.160, 151.170 [461-220, 224-61-4406(b), 224-10-100-173]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative
regulation is necessary to establish the requirements for per-
mits to withdraw water and the reporting procedure to be used in
conjunction with water withdrawal permits issued by the Division of
Water.

Section 1. The necessity for water withdrawal permits shall be
determined according to the following criteria:

(1) If [Where] the average withdrawal rate is more than 10,000
gallons per day, a permit shall be required except as exempted by
KRS 151.140.

(2) If [Where] the withdrawal of water is made at a relatively
constant rate each day and the average withdrawal rate is 10,000
gallons per day, or less, no permit shall be required; or

(3) If [Where] withdrawals are made on an irregular basis and
at an irregular rate, permits may be required if [where-the-division
determines that the water withdrawn represents a significant por-
tion of the available water supply or that] collection of withdrawal
data is necessary for water resource planning purposes.

Section 2. Permit Issue Date and Effective Date. (1) Each
permit shall clearly show:
(a) An issue date, which shall be the date on which a permit is
issued by the cabinet representative; and
(b) An effective date, which shall be the date on which a per-
mitted withdrawal may begin.

(2) The issue date may be up to three (3) years in advance of
the effective date.

(3) Water allocated by a permit that is issued more than six (6)
months in advance of the effective date shall be reserved for use
by that applicant if:
(a) The requested amount of water is available from the pro-
posed water source;
(b) There remains an amount of water that may be allocated
for other competing uses; and
(c) The applicant provides to the cabinet additional project
information and quarterly status reports that document the contin-
ued viability of and progress toward the completion of the project
by the permit's effective date.

1. This shall include:
(a) [1-1] A proposal for securing financing of the project, and
(b) [1-2] A project schedule with the anticipated dates for all
major milestones. These milestones shall include:
(i) [1-a] Funding approval;
(ii) [1-b] Commencement of construction;
(iii) [1-c] Site preparation;
(iv) [1-d] Construction of major structural or project elements;
and
(v) [1-e] Completion of construction;
and
(vi) [1-f] Commencement of project operations and water with-
drawal.

2. Quarterly status reports shall address each milestone
listed in subparagraph 1b of this paragraph. Reports shall be
due thirty (30) days after the end of each calendar quarter
following the issuance date of the permit.

(6) [6] For those permits having an issue date more than six
(6) months in advance of the effective date, project schedule may
be amended and the permit's effective date extended up to
one (1) year if the permittee demonstrates that circumstances
beyond the control of the permittee have caused an unavoidable
delay in the completion of the project.

(6) [6] For those permits having an issue date more than six
(6) months in advance of the effective date, withdrawals shall begin
no later than six (6) months after the effective date.

(6) [6] For those permits having an issue date more than six
(6) months in advance of the effective date, a water withdrawal
permit shall expire and become void if the holder of the permit fails
to:
(a) [1-1] Adhere to the project schedule as submitted at the
time of permit issuance or as amended according to subsec-
tion (4) of this section;
(b) [1-2] Comply with the interim reporting requirements; or
(c) [1-3] Commence withdrawals within six (6) months after
the permit effective date, including any extensions granted under
subsection (4) of this section.

Section 3. Water Withdrawal Reporting Requirements. ([4][4])
Reports of water withdrawn pursuant to permit shall be made as
follows:
(1) [6] Withdrawals made at a relatively constant daily rate
shall be recorded daily (monthly) and reported to the division

- 101 -
monthly (semiannually) conforms supplied by the cabinet [division].
(2) If [(b) Where] withdrawals are made on an irregular basis
and at an irregular rate, the division may specify recording fre-
cuency as the circumstances require. Reporting of withdrawal
information to the cabinet [division] shall be made monthly (semi-
annually). Recording and reporting shall be done on forms sup-
plied by the cabinet. The forms are incorporated by reference in Section
4 of this administrative regulation [division].
(3) Increased reporting or recording frequency of the rate
or volume of a permitted water withdrawal may be required if:
(a) A water withdrawal may adversely impact other water
uses in water quality or aquatic habitat; or
(b) The date is needed for water resources management or
planning purposes. If [(c) [Where] (necessarily,) in the discretion
of the division](l) increased reporting or recording frequency may be
required-

Section 4 Incorporation by Reference (1) The following ma-
terial is incorporated by reference:
(a) "Monitoring Results Submittal Form, DEP 0056 (3/05)";
and
(b) "Water withdrawal report form, DEP 8058 (3/05)".
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Division of Water,
14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m.
to 4:30 p.m. [The permittee shall complete and return the
water withdrawal report form to the division within thirty (30) days
after receiving such form.]

JOHN W. CLAY, Deputy Secretary
For Lesuanja Wilcher, Secretary
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.
CONTACT PERSON: David W. Morgan, Director, Division of
Water, Department for Environmental Protection, 14 Reilly Road,
Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-
0111.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David W. Morgan, Director
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administra-
tive regulation establishes certain conditions applicable to with-
drawals of 10,000 gallons or more per day of waters of the com-
monwealth.
(b) The necessity of this administrative regulation: This regula-
tion is necessary to establish the requirements for permits to with-
draw water and the reporting procedure to be used in conjunction
with water withdrawal permits issued by the Division of Water.
(c) How this administrative regulation conforms to the contex-
t of the authorizing statute: This administrative regulation conforms
to the authorizing statute by establishing certain conditions appli-
cable to permits for withdrawal of waters of the commonwealth.
This administrative regulation helps to ensure that the proper
quantity and quality of water is available to the people of the com-
monwealth.
(d) How this administrative regulation currently assists or will
assist in the effective administration of the statute: This adminis-
trative regulation establishes certain conditions applicable to per-
mits for withdrawal of waters of the commonwealth. Permitting and
regulating water withdrawals ensures a fair and equitable distribu-
tion of water among all users that minimizes water quantity-related
problems.
(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: This amendment will create provisions for dates on
water withdrawal permits: an "effective date" (the date at which a
permitted water withdrawal may begin) and an "issue date" (the
date on which the cabinet issues the permit). The amendment will
also create certain conditions specific to the use of issue dates and
effective dates to ensure that water withdrawal permits will be is-
sued with specificity in quantity, time, place, and rate to applicants
who have established an amount of water for which there is a need
for a useful purpose as required by KRS 151.170.
(b) The necessity of the amendment to this administrative
regulation: This amendment is necessary to remove barriers that
currently prevent the issuance of a water withdrawal permit to ap-
plicants that propose a project requiring more than 6 months to
bring on line. The water withdrawal permit provides assurance to
the applicant that the quantity of water required by the project will
be available at the time the project is completed and ready to begin
withdrawing water.
(c) How the amendment conforms to the content of the
authorizing statutes: The amendment will clarify the permitting
procedures, ensuring proper distribution and use of water for all per-
sons equitably and reasonably interested in the use and availability
of water, and provide for adequate disposition of water among the
people of the commonwealth.
(d) How the amendment will assist in the effective administra-
tion of the statute: This amendment will clarify the permitting and
water withdrawal requirements and improve the efficiency and
effectiveness of the program. It will also ensure consistency in
decisions regarding water withdrawal permitting.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this administra-
tive regulation: This administrative regulation applies to all persons
who withdraw or propose to withdraw greater than 10,000 gallons
per day of water. There are currently over 685 permitted water
withdrawers and the division receives between 50 and 70 applica-
tions for water withdrawal permits each year. Affected persons may
include industrial or manufacturing facilities, water treatment plants,
power generating facilities, coal processing plants, quarries, golf
courses, fish and wildlife management areas and nonexempt agri-
cultural and commercial users.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of the administrative
regulation, if new, or by the change, if it is an amendment: This
amendment will clarify permitting procedures relative to the time in
which a water withdrawal permit may be issued by the cabinet and
the time of actual water withdrawal. This amendment will improve
the efficiency and effectiveness of the program and provide consis-
tency in the issuance of water withdrawal permits.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: Two staff members currently implement the water
withdrawal permitting program. At the current person-year cost of
these staff members of $50,300 per year, this would equate to
$100,600 per year.
(b) On a continuing basis: Same as (a).
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation? The
funds to support the implementation and enforcement of this
administrative regulation are from the state general fund.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regula-
tion, if new, or by the change, if it is an amendment: An increase in
funding will not be necessary to implement this amendment to the
administrative regulation. There are no fees for water withdrawal
permits established by this administrative regulation.
(8) State whether or not this administrative regulation estab-
ishes any fees or directly or indirectly increases any fees: There
are no fees for water withdrawal permits established by this
administrative regulation.
(9) TIERING: Is tiering applied? Tiering is applied. This adminis-
trative regulation does not apply to persons withdrawing less than
10,000 gallons of water per day because they comprise an insig-
nificant impact to waters of the commonwealth.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a
local government, including any service provided by that local gov-
ernment? Yes
2. State what unit, part, or division of local government this
administrative regulation will affect. This administrative regulation
will affect local government entities withdrawing greater than
10,000 gallons per day of water. Examples include municipal water

- 102 -
treatment plants, or golf courses associated with state parks or cities.
3. State, in detail, the aspect or service of local government to which this administrative regulation relates, including identification of the applicable state or federal statute or regulation that mandates the aspect or service or authorizes the action taken by the administrative regulation. This amended administrative regulation relates to water withdrawals including municipal water treatment plants.
4. Evaluate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on current revenues.
Expenditures (+/-): There is no anticipated effect on current expenditures.

Other explanation: The time required for compliance with the administrative regulation will not increase due to this amendment.

COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Comments)

785 KAR 1:130. GED eligibility requirements.

RELATES TO: KRS 151B 023, 151B.125

STATUTORY AUTHORITY: KRS 151B 023, 151B 410, EO 2004-725

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.410(1) requires the Department for Adult Education and Literacy to promulgate necessary administrative regulations and administer a statewide adult education and literacy system through the state. KRS 151B.023 designates the Department for Adult Education and Literacy to carry out the statewide mission on adult education. The department has the responsibility for all administrative functions of the state in relation to the management, control, and operations of programs and services in adult education and literacy. KRS 151B.125 recognizes the General Educational Development (GED) Tests [test] for high school equivalency purposes in Kentucky. EO 2004-725 abolished the Department for Adult Education and Literacy and transferred its duties to the Council on Postsecondary Education. This administrative regulation establishes the eligibility requirements for taking the GED Tests [test].

Section 1. Eligibility Requirements. The [Except as provided in Sections 2 and 3 of this administrative regulation, the] GED Tests [test] shall be administered to an applicant with a Kentucky address who:
1. Has reached his 19th birthday; or
2. Is at least sixteen (16) [seventeen (17)] years of age [and]
(a) Has officially withdrawn from public or private school for ninety (90) days as certified by the local school district; or
(b) Is [and]
(c) The applicant's last enrolled class has graduated; or
(d) The applicant has been out of formal instruction for a period of one (1) year.

Section 2. Exigent Circumstances. An applicant at least sixteen (16) years of age who believes exigent circumstances exist and who does not meet the conditions of Section 1 of this administrative regulation may request an exemption from the local school superintendent or designee in the district where the applicant resides. An exemption granted on the basis of exigent circumstances or a denial shall be in writing. A copy of all exigent circumstance decisions shall be mailed or faxed within five (5) working days of the decision to the state GED administrator. An applicant may appeal a denial by the local school superintendent to the Commissioner of the Department for Adult Education and Literacy.

Section 3. Exemptions. An applicant at least sixteen (16) years of age with a Kentucky address and is [shall be eligible to]

take the GED test if the applicant is:
(a) [If] Committed or placed in a state correctional facility;
(b) [If] Enrolled in the Jobs Corps Program of Instruction,
(c) [If] Considered a state agency child, as defined by KRS 158.135(1)(a) and receives approval for the GED Tests [test] from his interdisciplinary team; or
(d) [If] Detained in a juvenile detention center or juvenile holding facility, and the applicant:
1. [If] Is at least one (1) year behind academically from his graduating class;
2. [If] Has a minimum stay in detention of thirty (30) days; and
3. [If] is approved for the GED Tests [test] by the local school superintendent.

Section 4. Superintendent Waiver. Provided however, the local school superintendent may waive the ninety (90) day school withdrawal provision of Section 1(2) of this administrative regulation for an employment condition, postsecondary education enrollment, medical reason, or family circumstances.

Section 5. [If] Test Readiness. An applicant shall be certified as test-ready by an entity approved by Kentucky [Department for Adult Education and Literacy designated entity].
1. Before taking the official GED Tests [test], an applicant shall:
(a) Successfully complete the Official GED Practice Test with the same passing scores required for the GED test or present a Kentucky Educational Television GED Connection Voucher and []
(b) Complete the Kentucky Adult Education GED Test [Testing] Application [Form]. This form shall be available from a county [local] adult education provider, [local school district] [superintendent], or the Kentucky Department for Adult Education and Literacy.
(c) Complete the Military GED Application [Form] prior to taking the test; and

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Kentucky Adult Education GED Test Application, April 2005 [GED Testing Application (DAEL-6), revised 10/2001 edition, Cabinet for Workforce Development, Department for Adult Education and Literacy]; and
(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)" revised 6/96 edition, GED Testing Service, Washington, D.C.

2. This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentuck Adult Education, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, [the Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 More Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

THOMAS D. LAYZELL, President
APPROVED BY AGENCY: June 15, 2005
FILED WITH LRC: June 15, 2005 at 11 a.m.
CONTACT PERSON: B.J. Helton, Senior Associate, GED Administrator, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 250, Frankfort, Kentucky 40601, phone (502) 573-5114, ext. 102, fax (502) 573-5436, email bjhelton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B.J. Helton
(1) Provide a brief summary of:
(a) What this administrative regulation does: In support of HB 178 (2004 Regular Session), the amendment reduces the waiting time to take the GED Tests allowing dropouts to be eligible to test before October 1. The amendment allows students in the Depart-
ment of Education Secondary GED Program to take the GED Tests.

(b) The necessity of this administrative regulation: This regulation is mandated by KRS 151B.023 and 151B.410.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms explicitly to the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administration regulation complies with the statutory change of status of dropout students and recognizes a new KDE Program.

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

(a) How the amendment will change this existing administrative regulation: It shortens the time requirement before a dropout student may take the GED. It allows students in the Option Program to test.

(b) The necessity of the amendment to this administrative regulation: Under the current administrative regulation, a student may not take the GED within a year of dropping out or until the last enrolled class has graduated. Under the current regulation there is no provision for enrolled secondary students to take the GED.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms explicitly to the requirements of HB 178, (2004 Regular Session)

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms the GED eligibility requirements to legislative changes made in the status of high school dropouts and recognizes the eligibility of students in a new Secondary GED Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local providers of adult education in each county, local school districts, adult education students, and students in the Secondary GED Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Students who dropout will be eligible to take the GED at an earlier date; this may increase the number of high school dropouts who get their GED by removing an artificial time barrier that restricted access to the GED for 1 year. Secondary students enrolled in an alternative Secondary GED Program will be permitted to take the GED.

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

(a) Initial: No cost.

(b) On a continuing basis: No cost.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

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

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Test fees are assessed, but these are covered in another administrative regulation. No fees or fee increases are involved in the administration of this administrative regulation.

(9) [6] "Tiering is tiering applied? Tiering is not appropriate under these circumstances. The regulation applies to all GED candidates equally.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Office of the Commissioner
(Amended After Comments)

907 KAR 1:018. Reimbursement for drugs.

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.6316(4), 217.015, 311.550, 311.560, 42 C.F.R. 440.120, 447.331, 447.332, 447.333, 42 U.S.C. 256b, 1396a-d


NECESSITY, FUNCTION, AND CONFORMITY: 2005 Ky. Acts ch. 99 [EO-2004-726, effective July 9, 2005] recognized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law, in the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.6316(4) requires the department to promulgate an administrative regulation to establish a dispensing fee for prescriptions. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and the dispensing fees.

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

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

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

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

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

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

(7) "Gross amount due" means the total price of a drug claimed from all sources, which includes the ingredient costs, usual and customary charge, dispensing fee, the incentive amount paid (if one [1] is paid) and any other charges the pharmacy may add to the claim.

(8) "Weighted majority of volume purchase" means a calculation used in determining a state maximum allowable cost that is based on market share foot-paid and which may include the dispensing fee paid and the incentive amount paid ["Non-solid dosage form" means a covered drug item other than an oral tablets, oral capsule, or inhalation]

(9) [6] "Wholesale acquisition cost" or "WAC" means the estimated acquisition cost for the wholesaler as listed in a nationally-recognized comprehensive drug data file for which the department has contracted.

Section 2. Reimbursement. (1) [Except-as-specified in subsection (4)(e) of this section, reimbursement to a participating-provider shall be comprised of a dispensing fee and the cost of the drug product.] If a recipient is required to pay a copayment for a drug in accordance with 907 KAR 1:064, the reimbursement to the participating provider [for the dispensing fee] shall be reduced by one (1) dollar the amount of the copayment.

(2) The department [shall]:

(a) May establish a state maximum-allowable cost for a drug:

1. If two (2) or more A-rated therapeutically-equivalent, multi-source, noninnovator drugs with a significant cost difference exist for the given drug; and

2. By reviewing the pricing sources AWP, WAC and direct price for the drug as identified in a nationally-recognized comprehensive drug data file for which the department has contracted and utilizing the weighted majority of volume purchased. For example, if for a given drug there are two (2) therapeutically-equivalent drugs with one (1) priced at five (5) dollars per pill and possessing thirty (30) percent of the market share and the other priced at one (1) dollar per pill and possessing seventy (70) percent of the market share, we will factor in the market share
In determining the state MAC price rather than simply averaging the two (2) prices; and

(b) Shall maintain a current listing of drugs and their corresponding state maximum-allowable costs via a link from the department's website located at the following address:

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

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

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

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

(b) An appeal of a state maximum-allowable cost price for a drug shall be investigated and resolved within three (3) business days.

(c) If available, the provider shall be supplied with the name of the manufacturer who has a price comparable to the state maximum-allowable cost price.

(d) The provider is able to obtain access to the drug in question; and

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

1. For which a federal upper limit does not exist, and
2. For which at least one (1) provider has a price comparable to the state maximum-allowable cost price.

(b) Determine a state maximum-allowable cost for a drug by identifying the lowest price for a drug regardless of dosage form and age; and maintaining pricing that price by 150 percent. The lowest price for a drug shall be:

1. Identify the overall average national drug price data for the drug by the department.
2. Determine by reviewing the pricing sources determinations of AWP, WAC, and direct price for the drug.

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

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

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

(3) A provider may submit drug acquisition cost or product availability information to the department. Upon receipt of accurate documentation, the provider, the department, and the pharmacy will determine the state maximum-allowable cost value to ensure it reflects an accurate market price and availability; and

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

(c) Reimbursement is for a pharmacy participating in the Medicaid Program for a drug listed in the Kentucky Medicaid Outpatient Drug List (Formulary) established in 907 KAR 1:019 and provided to an eligible recipient shall be determined in accordance with the requirements for the dispensing of an emergency supply in subsection 3 of this section, reimbursement shall be the lesser of:

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

(d) Except as provided in paragraph (e) of this subsection, reimbursement for a drug shall be the lesser of:

1. The federal upper limit plus a dispensing fee and unit dose add-on as appropriate; or
2. The state maximum-allowable cost plus a dispensing fee and unit dose add-on as appropriate; or
3. The estimated acquisition cost (EAC) which shall equal the AWP minus twelve (12) percent, plus a dispensing fee and unit dose add-on as appropriate; or
4. The usual and customary billed charge.

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

(f) The lesser of:

1. The federal upper limit, if one (1) exists, plus the dispensing fee for the prescription and, if applicable, a unit dose addition; or
2. The state maximum-allowable cost, if one (1) exists, plus a dispensing fee and, if applicable, a unit dose addition; and
3. The estimated acquisition cost (EAC) which shall:
   (a) For a generic drug, equal the AWP minus fourteen (14) percent, plus a dispensing fee and, if applicable, a unit dose addition; and
   (b) For a brand name drug, equal the AWP minus fifteen (15) percent, plus a dispensing fee and, if applicable, a unit dose addition; or
4. The usual and customary billed charge; or
5. The gross amount due.
c. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on of:
d. The usual and customary billed charge.
(3) If a pharmacy has met the requirements specified in 407 KAR 1:019 for obtaining a brand-name drug for which one (1) or more generic forms of the drug are available and has hand written "brand medically necessary" or "brand necessary" on the Brand Name Drug Request Form or other form in accordance with 407 KAR 1:016, the reimbursement for the dispensing of an emergency supply of a drug shall be the lesser of:
a. The estimated acquisition cost (EAC), which shall equal the average wholesale price (AWP) minus twelve (12) percent, plus the dispensing fee for the prescription and, if applicable, a unit dose add-on or:
b. The usual and customary billed charge.
(4) If the dispensing of an emergency supply results in partial filling of the quantity or amount prescribed, reimbursement for the partial filling of the remainder of the prescription shall utilize the methodology specified in subparagraphs 2 and 3 of this paragraph, except that only one (1) dispensing fee shall be allowed for the combined partial fill and subsequent completion fill [reimbursement shall not include a dispensing fee].
(5) Reimbursement shall be denied if:
1. The recipient is ineligible on the date of service;
2. The drug is excluded from coverage in accordance with 407 KAR 1:019, Section 3, or
3. Prior authorization is required by the department and has been denied or has not been requested.
(6) For a nursing facility resident meeting Medicaid nursing facility level of care criteria in accordance with 407 KAR 1:022, there shall not be more than one (1) dispensing fee allowed per provider per recipient per drug within a rolling twenty-four (24) day period unless:
1. The drug is a Schedule II, III, or IV controlled substance or a legend intravenous drug, in which case up to three (3) additional dispensing fees shall be allowed;
2. The drug is a non-solids dosage form in which case one (1) additional dispensing fee shall be allowed;
3. The prescription dosage has been changed, in which case one (1) additional dispensing fee shall be allowed;
4. The department determines that it is in the best interest of the recipient to allow the additional dispensing fee; or:
1. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
2. Four (4) dispensing fees allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph; or:
3. If a provider requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.
(7) For a personal care recipient there shall not be more than:
1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
2. Four (4) dispensing fees allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph; or:
3. (a) Two (2) dispensing fees allowed per drug within a calendar month for a drug that is a non-solids dosage form in which case up to a rolling twenty-three (23) days from the last date the medication was dispensed; or
(b) Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on medical specialty, best practice standards, and appropriateness of care.
(8) Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same day for a drug with the same:
1. National Drug Code (NDC), or
2. Generic name, strength, and dosage form.
(9) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 407 KAR 1:340.
(10) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 407 KAR 1:673.
(11) If a payment is made for a drug for which there is no authorization as required in accordance with 407 KAR 1:019, the provider shall reimburse the department the amount of the payment.
(12) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.
(13) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient's medical assistance identification card. If the date of service is greater than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.
(14) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.
(15) (a) If the medical assistance identification card indicates that the Medicaid recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.
(b) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card, shall submit a Third-party Liability Lead Form to the department's fiscal agent.
(16) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.
(17) A pharmacy of a covered entity as defined in 42 U.S.C. 256 which purchases drugs through the United States Public Health Service Discount Program in accordance with 42 U.S.C. 256 shall bill the department the pharmacy's actual acquisition cost for a drug; and
(b) The department shall reimburse the pharmacy's actual acquisition cost for the drug plus a dispensing fee in accordance with Section 3 of this administrative regulation.
(18) If a covered entity as defined in 42 U.S.C. 256 notifies the United States Office of Pharmacy Affairs that its pharmacy is
not included under 42 U.S.C. 256b:

(a) The pharmacy shall submit [bill] its usual and customary amount and gross amount due for a drug, and
(b) The department shall reimburse for a drug in accordance with Section 2 of this administrative regulation plus a dispensing fee in accordance with Section 3 of this administrative regulation.

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

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

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

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

1. Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer; and
2. Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist.
(b) The unit dose addition shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars for a generic drug or four (4) dollars and fifty (50) cents for a brand name drug [four (4) dollars and fifty-one (51) cents] is not paid due to monthly limits on dispensing fees or in accordance with Section 2(4)(e) of this administrative regulation.

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

(1) As the lesser of:
(a) The maximum-allowable cost or estimated acquisition cost established in accordance with this administrative regulation; or
(b) The usual or customary amount or gross amount due [charge to the general public for the drug]; or
(c) The federal upper limit.
(2) In accordance with 907 KAR 3.010 for a free immunization through the Vaccines for Children Program.

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

JAMES W. HOLLSINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: June 9, 2005
FILED WITH LRC: June 10, 2005 at noon
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7973.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

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

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing a state maximum allowable cost for any drug for which 2 or more multisource drugs with a significant cost difference exist; altering drug reimbursement to AWP minus 14% for generic drugs and AWP minus 15% for brand name drugs; altering the dispensing fee from four $4.51 for all drugs to $5 for generic drugs and $4.50 for brand name drugs; revising the unit dose drug packaging payment to $0.02 per unit dose for a nonunit dose drug repackaged in unit dose form by a pharmacist; allowing 1 dispensing fee per rolling 24-day period per nursing facility service recipient per drug except for certain circumstances; establishing for an outpatient service recipient, except for a support for community living service recipient, that a maintenance drug shall be dispensed up to a 92-day supply with only 1 dispensing fee allowed for the maintenance drug refill within the 92-day time period, establishing that if the dispensing of an emergency supply of a drug results in partial filling of the quantity or amount prescribed, that only 1 dispensing fee shall be allowed for the combined partial fill and subsequent completion fill; and adding gross amount due to drug reimbursement options.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid outpatient pharmacy providers and drug manufacturers will be affected by this administrative regulation.

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

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

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

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

(c) What is the source of the funds to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX, and matching funds of general fund appropriations and collections will be used to fund the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The administrative regulation neither establishes nor increases any fees.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: Pursuant to 42 U.S.C. 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 U.S.C. 1396 et seq. This administrative regulation complies with federal statutes/regulations governing the Medicaid program and drug reimbursement.

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

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

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter (than federal) requirements.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(AMendmenit)
11 KAR 15:090. Kentucky Educational Excellence Scholar-
ship (KEES) Program.

RELATES TO: KRS 154A.130(4), 164.7535, 164.7871,
164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889
STATUTORY AUTHORITY: KRS 164.020(29), 164.7874,
164.7877(2), 164.7879(1), (2), (3), 164.7881(4)(a), (c), (d),
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.7877(3) requires the Authority [council] to administer the Kentuc-
y Development Excellence Scholarship (KEES) Program. KRS
164.7877(3) requires the Authority [council] to administer the funds appropriated to the trust fund for the program KRS 164.7874(14)
requires the Authority [council] to determine the KEES curriculum's courses of study. KRS 164.7879(3)(c) requires the Authority [council]
to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS
164.7881(6) requires the Authority [council] to establish a five (5)
year postsecondary education program standard. KRS 164.7871(4)(a) requires the Authority [council] to establish overall award criteria for the program. KRS 164.7879(2)(c) requires the Authority [council] to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of
record. KRS 164.7535 and 164.7881 (4)(c) require the Authority [council] to identify equivalent undergraduate programs of study. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES)
Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.
(2) "Academic year" is defined in KRS 164.7874(2).
(3) "Accredited out-of-state high school" means a high school that is:
(a) Located in a state other than Kentucky or in another coun-
ty; and
(b) A member of an organization belonging to the Commission on International and Trans-Regional Accreditation.
(4) [Lemma] "ACT" means the test:
(a) Administered to a student for entrance to a Kentucky post-
secondary education institution; and
(b) Owned by the ACT Corporation of Iowa City, Iowa.
(5) [Lemma] "Advanced placement" means a cooperative educa-
tional endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KDE.
(6) [Lemma] "Authority" of "KHEAA" is defined in KRS 164.7874(4).
(7) "Council of CARE" is defined in KRS 164.7874(7).
(8) "Cumulative grade point average" means the total grade point average for a postsecondary education student as reported by the postsecondary education institution where a student is currently enrolled.
(9) [Lemma] "Department of Defense school" means a school operated by the U. S. Department of Defense for the purpose of providing a high school education to a child whose custodial parent or guardian is in active military or diplomatic service in a state other than Kentucky or in another country.
(10) "Eligible high school student" is defined in KRS
164.7879(4)(a) and 164.7879(3)(c).
(11) "Enrolled" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating postsecondary education institution that a student is attending.
(12) [Lemma] "GED" means a general educational development diploma awarded to a student.
(13) "High school" is defined in KRS 164.7874(12).
(14) "International baccalaureate course" means a course in a secondary education program sponsored by the International Baccalaureate Organization and recognized by the KDE in 704 KAR 3.340, Section 2(3)(b).
(15) [Lemma] "KEES curriculum" is defined in KRS 164.7874(14).
(16) Participating institution" is defined in KRS 164.7874(18).
(17) "SAT" means the test:
(a) Administered to a student for entrance to a Kentucky post-
secondary education institution; and
(b) Owned by the college board.

Section 2. High School Grade Point Average Calculation and
Reporting. (1) An eligible high school student's grade point aver-
age shall be calculated as follows:
(a) For each year of high school the grade point average shall be calculated using each grade awarded for all courses taken during the academic year.

Section 3. High School Students of Custodial Parents or
Guardians in Active Military Service. (1)(a) For purpose of deter-
mining eligibility under the provisions of KRS 164.7879(2)(c), a high school student shall establish that the custodial parent or guardian meets the requirements of KRS 164.7879(2)(c) and shall submit the [source of] "Home of Record Certification" to the Authority [KHEAA] as required.
(b) [The council annually shall certify to the Kentucky Depart-
ment of Education the names of students who are eligible under the provisions of KRS 164.7879(3)(c).
(c) [The Authority] annually shall notify the eligible high school student and the custodial parent or guardian of the student's eligibility.
(2) (a) A high school student, determined to be eligible for the KEES program under the terms of KRS 164.7879(2)(c) and sub-
section (1)(a) of this section, shall be responsible for:
1. Requesting grade and curriculum information from the local school; and
2. Requesting that the local school submit the information to the Authority [Kentucky Department of Education] using the [Kentuc-
ky Department of Education's] "Curriculum Certification" Form [KES-202] and the "Data Submission" Form [KES-302].
(b) The Authority [Kentucky Department of Education], upon
receipt of curriculum and grade information from an accredited out-of-state high school or Department of Defense school for a student determined to be eligible for the KEES Program under this section, shall:
1. Verify that the submitted curriculum meets the requirements of Section 4 of this administrative regulation;
2. Verify that the out-of-state high school or Department of Defense school is an accredited high school;
3. Retain the "Curriculum Certification" on file until the student's eligibility has expired; and
4. Submit the grade information to the KHEAA.

Section 4. Postsecondary Student Eligibility and KEES Curriculum. (1) A Kentucky postsecondary student shall be eligible to receive a base scholarship award if the student:
(a) Has earned a base scholarship award in high school;
(b) Has completed the KEES curriculum as set forth in subsection (2) of this section;
(c) Has graduated from a Kentucky high school except as provided in Section 2(4) or 3 of this administrative regulation; and
(d) Is enrolled in a participating institution in an eligible program.
(2) Except as provided in subsection (4) of this section, the KEES curriculum shall consist of the courses and electives required by this subsection.
(a) [For a student enrolled in high school during the 1998-1999 academic year, the curriculum required in 704-KAR-5-305, Section 4 or 2, as appropriate without restriction on the type of electives taken.]
(b) For a student enrolled in high school during the 1999-2000 and 2000-01 academic years and who is required to meet the curriculum standards in 704-KAR-3-305, Section 1, the eight (8) electives required by 704-KAR-3-305, Section 1, shall be taken in the areas and according to the standards established in paragraph (d) of this subsection.
(c) For a student enrolled in high school during 1999-2000 and for each year thereafter who is required to meet the curriculum standards in 704-KAR-3-305, Section 2, five (5) of the seven (7) electives required by 704-KAR-3-305, Section 2 shall be taken in the areas and according to the standards established in paragraph (d) of this subsection.
(b) [61] The following subject areas and standards shall be applicable for electives. An elective in:
1. Social studies, science, mathematics, English/language arts, or arts and humanities shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.
2. Physical education or health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.
3. Foreign languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.
4. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education or career pathways shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.
(3) A student who graduates from high school at the end of the fall semester of his or her senior year and who meets the requirements of KRS 164.7874(14) shall be eligible to earn a KEES award for that year upon:
(a) Completion of no fewer than three (3) courses of study; and
(b) Satisfying the provisions of KRS 164.7879.
(4) A high school may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:
(a) The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document "Academic Expectations";
(b) [72] The course is an honors course, cooperative education course, advanced placement course, international baccalaureate course, dual credit course, or a course taken at a postsecondary education institution.
(5) A high school annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the KEES curriculum.

Section 5 Eligible Postsecondary Education Programs. (1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the Authority (Council).
(2) An eligible program and an out-of-state participating institution shall be limited to those programs that qualify through the Academic Common Market administered by the Southern Regional Education Board except as provided in subsection (4) of this section.
(3) Pursuant to KRS 164.7881(6), the following academic programs at Kentucky postsecondary education institutions shall be approved as five (5) year baccalaureate degree programs:
(a) Landscape architecture (04.0601); and
(4) Pursuant to KRS 164.7535 and 164.7885(4)(c)(1), an academic program shall be designated as an equivalent undergraduate program of study if the student in the program of study:
(a) Has not received eight (8) semesters of a KEES award;
(b) Is classified by an institution as a graduate or professional student and is enrolled in one (1) of the following academic programs:
1. Pharm D;
2. The optometry or veterinary medicine programs at an institution which is a part of the Kentucky Contract Spaces Program; or
3. A program contained on the Equivalent Undergraduate Programs List [402]; and
(c) Has not completed a baccalaureate degree.

Section 6. SAT Conversion Table. Pursuant to KRS 164.7874(3), the following SAT to ACT Conversion Table shall be used:

Table C-2
Concordance Between SAT I Recentered V+M Score and ACT Composite Score

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<th>SAT I V+M</th>
<th>ACT Composite</th>
<th>SAT I V+M</th>
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<th>ACT Composite</th>
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-110-
Volume 32, Number 1 - July 1, 2005

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</table>

This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who is a citizen, national or permanent resident of the United States and who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:
(a) The student is not a convicted felon;
(b) The date of the student's graduation is May 1999 or thereafter;
(c) The student takes the ACT or SAT and has at least a minimum score as established by KRS 164.7879(3);
(d) The student enrolls in a participating institution within five years after graduation from high school.
(2) A Kentucky resident who is a citizen, national or permanent resident of the United States and who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award if:
(a) The student is not a convicted felon;
(b) The student's 18th birthday occurs on or after January 1, 1999;
(c) The student takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;
(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3);
(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.
(3) A student who graduates from or attends an accredited out-of-state high school or Department of Defense school shall qualify for a supplemental award if:
(a) The parents meet the provisions of KRS 164.7879(2)(c)1 and 2;
(b) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3);
(c) The student enrolls in a participating institution within five (5) years of graduating from or attending the accredited out-of-state high school or Department of Defense school.
(4) An eligible student who receives a GED diploma within five (5) years of attaining eighteen (18) years of age shall be eligible for a supplemental award if:
(a) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3); and
(b) The student enrolls in a participating institution within five (5) years of receiving the GED diploma.
(5) An eligible student receiving a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.
(6)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.
(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify the Authority (KHEAA) of the student's eligibility.

Section 8. Supplemental Award. An eligible high school student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

Section 9. Administrative Responsibilities and Expenses of Program. (1) The Authority [CPE] annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Kentucky Educational Excellence Scholarship Trust Fund" described in KRS 164.7877(1) and (3).
(2) The Authority [KDE and the KHEAA] annually[by June 15] shall adopt [provide to the CPE] a budget proposal indicating the amount of funds available [requested] and a detailed listing of the expenditures necessary to operate the program.
(3) The CPE shall notify the KDE and the KHEAA of the amount of funds available for the next fiscal year no later than April 30 of the fiscal year preceding the fiscal year that funds are to be made available.
(4) The Authority [CPE] shall develop an allotment schedule for the release of the administrative funds [and shall notify the KDE and the KHEAA of that schedule].

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Home of Record Certification, June 2005 [KEES-1025, September 2002]."
(b) "Curriculum Certification, June 2005 [KEES-202, September 2002]."
(c) "Data Submission, June 2005 [KEES-302], January 2003; and"
(d) "Equivalent Undergraduate Programs List [402], June 2005 [January 2003]."
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Authority, 190 Airport Road [Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

John Prather, Chair
APPROVED BY AGENCY: May 26, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Friday, July 22, 2005, at 10 a.m., at 100 Airport Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Friday, July 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative

-111-
VOLUME 32, NUMBER 1 – JULY 1, 2005

regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until Monday, August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7290, fax (502) 696-7293.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Richard F. Casey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the procedures for administering the Kentucky Educational Excellence Scholarship (KEES) Program.

(b) The necessity of this administrative regulation: HB 460 transfers the administrative responsibility of the program from the Council on Postsecondary Education (CPE) to the Kentucky Higher Education Assistance Authority (KHEAA). This administrative regulation is necessary to establish the requirements relating to the KEES Program and to transfer the administrative responsibility of the program from the CPE to the KHEAA.

(c) How this administrative regulation conforms to the content of the authorization statutes: KRS 164.7871(3) requires CPE to administer the funds appropriated to the trust fund for the program; KRS 164.7874(14) requires CPE to determine the KEES curriculum's courses of study; KRS 164.7879(3)(c) requires CPE to determine the eligibility of a no certified, nonpublic high school graduate and for a GED recipient for a supplemental award; KRS 164.7874(3) requires CPE to establish a table to convert an SAT score into an ACT standard; KRS 164.7879 requires CPE to establish a 5-year postsecondary education program standard, KRS 164.7881(4)(a) requires CPE to establish overall award levels for the program; KRS 164.7879(2)(c) requires CPE to determine eligibility for children of parents who are in the military and who claim Kentucky as their home of record; and KRS 164.7535 and 164.7881(4)(c) require CPE to identify equivalent undergraduate programs of study. CPE previously adopted this administrative regulation, 13 KAR 2090, to establish those requirements. Pursuant to HB 460, all of these responsibilities were transferred to KHEAA and will take effect June 20, 2005.

(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 establishing program eligibility criteria for administration of the KEES Program by KHEAA.

(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. In addition to changes in numbering and changes of references from CPE to KHEAA, substantive changes pertaining to eligible 5-year postsecondary education programs will be made.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary both to transfer responsibility for the KEES Program from CPE to KHEAA, as well as to establish criteria for KEES awards for eligible 5-year postsecondary education programs.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require CPE to develop regulations for administration of the KEES Program. Pursuant to HB 460, responsibility for administration of that program is to be transferred to KHEAA effective June 20, 2005; therefore, this amendment will achieve the required transfer of authority as well as establish criteria for eligible 5-year postsecondary programs under KEES.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing program eligibility criteria for the KEES Program by KHEAA.

(3) List the type and number of individuals, businesses, organiza-

tions, or state and local governments affected by this administrative regulation: Approximately 800 postsecondary students already enrolled who may pursue an engineering program of study, and any unknown number of future postsecondary students that may choose to pursue an engineering program of study.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment will impact the above groups by providing for no fifth-year KEES disbursements for engineering students beginning in academic year 2010-2011.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no funding required to implement or enforce this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. It is not applicable to this amendment. This administrative regulation is intended to provide equal opportunity to participate, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

Finance and Administration Cabinet
Department of Revenue
Office of Sales and Excise Tax
(Amendment)

103 KAR 28:051 Leases and rentals.

RELATES TO KRS 139.050, 139.090, 139.100, 139.105, 139.110, 139.120, 139.200, 139.210, 139.270, 139.280, 139.290, 139.310, 139.320, 139.330, 139.340, 139.410, 139.420, 139.430, 139.471, 139.484, 139.490, 139.532, 139.600, 139.620

STATUTORY AUTHORITY: [133A] KRS 131.130

NECESSITY AND FUNCTION: To interpret the sales and use tax law as it relates to leases and rentals of tangible personal property.

Section 1. Definitions. (1) "Primary property location" means the location as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, if use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) "Transportation equipment" means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(b) Trucks and truck-tractors with a gross vehicle weight rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:

1. Registered through the International Registration Plan and;

2. Operated under authority of a carrier authorized and certified by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(c) Aircraft that are operated by air carriers authorized and certificated by the U.S. Department of Transportation or another
Section 2. Registrants. Persons engaged in leasing or renting tangible personal property for use in Kentucky are retailers and shall register with the Department of Revenue to obtain a retail sales and use tax permit and report and pay the applicable tax derived from the gross lease or rental receipts. Each period for which a lease or rental is payable shall be considered a complete transaction in determining a retailer responsible for the tax in accordance with KRS 139.119(1)(c).

Section 3. Gross Receipts. (1) Gross receipts from the lease or rental of tangible personal property shall include but are not limited to:
(a) The total amount of payments, or consideration received by the lessor from the lessee; and
(b) Payments made by the lessee to a third party for the benefit of the lessor which are required by the terms of the agreement; and
(c) All itemized charges for costs incurred by the lessor and passed on to the lessee as separate charges in the lease or rental agreement including finance or interest charges, property tax, and insurance charges.
(d) Charges by a lessor to a lessee for a separately-executed maintenance agreement, which is not a part of the lease or rental agreement, are not subject to tax.

Section 4. Tax Responsibility. (1) The retailer/lessor leasing or renting tangible personal property within this state is required to collect the sales tax from the customer/lessee.
(2) Every out-of-state retailer leasing or renting tangible personal property for storage, use, or other consumption in this state is required to collect the use tax from the purchaser and remit the tax on gross lease or rental receipts to the Department of Revenue.
(3) The lessee's responsibility for the use tax is not relieved until payment of the amount due has been made to the Department of Revenue or to a retailer/lessor authorized to collect the Kentucky tax.

Section 5. Resale. (1) A lessor may execute a certificate to their suppliers for tangible personal property purchased exclusively for lease or rental.
(2) The purchase by lessors of parts and accessories which become part of the leased or rented property may also be purchased under a certificate. However, property purchased by a lessor to maintain leased or rented property of a lessor is subject to the tax.
(3) Tangible personal property purchased for resale without payment of the tax and to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for some purpose other than lease or rental becomes subject to tax upon use. The tax is measured by purchase price of the property and is in addition to the tax due on the lease or rental receipts.
(4) Tangible personal property purchased in part for lease or rental and in part for use shall not be purchased from a vendor under a certificate and is subject to tax.
(5) Retailers who purchase tangible personal property for outright sale, but, while holding the property in their inventory, make use of the property in their business through lease or rental are responsible for the applicable tax to the lease or rental receipts.
(6) Tangible personal property purchased by a retailer engaged exclusively in leasing or renting the property may be eligible for a deduction from the retailer's gross lease or rental receipts for an amount equal to the purchase price of the property used exclusively for lease or rental if the retailer has paid the sales or use tax applicable to the purchase price of the property.

Section 6. Lease with an Exemption Certificate. A lessor of tangible personal property shall not include within the measure of the tax gross receipts from a lease or rental if the lessor takes from the lessee a certificate of exemption as evidence that the property
leased will be used in an exempt manner under the sales and use tax law.

Section 7. Motor Vehicles. (1) The lease or rental of motor vehicles, which are for use on the public highways and upon which any applicable tax levied under KRS 138.460 or KRS 138.463 has been paid, is not subject to the sales or use tax.
(2) Motor vehicles, which are not subject to the motor vehicle usage tax or the U-Drive-It tax, are subject to the sales and use tax unless another applicable exemption applies.

Section 8. Reciprocity. (1) The sales and use tax law provides for credit against any Kentucky use tax for state sales tax paid in another state which imposes a sales tax substantially identical to that of Kentucky.
(2) Out-of-state lessors who have collected sales tax on a lump-sum basis for their state will be able to receive credit for the amount paid that other state up to the amount due to Kentucky.
(3) Kentucky will tax any excess lease or rentals, relating to the lump-sum tax amounts.
(4) Reciprocity will apply to any tax due Kentucky on lease or rental receipts only if the reciprocal state has levied and is legally due the sales or use tax paid on the lease or rental receipts.

Section 9. Lease of Real, Tangible and Intangible Property. (1) If lease or rental activity involves the lease or rental of real, tangible personal and intangible property, as the lease or rental of a business operation or establishment, the total amount of the lease or rental is subject to tax unless the amount applicable to the tangible personal property is separately stated.
(2) The amount separately stated for the tangible personal property shall not be less than the fair market lease or rental value for similar property for a similar rental or lease period.
(3) The lease or rental of tangible personal property between separate entities owned by the same or similar stockholders is subject to the tax unless otherwise exempted by the sales and use tax law.
(4) The tax is to be levied on the lease or rental amount charged or the fair market lease or rental amount, whichever is greater.

Section 10. General Sourcing Rules. (1) The lease or rental of tangible personal property, other than property identified in subsection (2), shall be according to the provisions of KRS 139.105(1).
(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced as follows according to the provisions of KRS 139.105(1).
(b) Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall not be altered by intermittent use at different locations. Intermittent use includes but is not limited to business property that accompanies employees on business trips and service calls.
(c) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.
(d) This subsection does not affect the imposition or calculation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
(2) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as follows:
(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location.
(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced in accordance with the provision of subsection (1)(a) of this section.
(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
(3) General rules. The lease or rental of tangible personal property for a consideration in Kentucky is treated as a sale or purchase of the receipts of which are subject to the sales or use tax.
The term “lease or rental” means the grant to another of the right to use and possess tangible personal property for a period of time and for a consideration. The term “lease or rental” includes financing transactions by a financial institution of leasing-affiliate of a financial institution although title is transferred principally for the purpose of securing the lease or rental agreement. The term does not include the lease or rental of real property or a transaction which provides a service. The providing of a service is any transaction which includes both services and tangible personal property for a consideration where the performance of the service is the essence of the transaction. Persons engaged in leasing or renting tangible personal property for use in Kentucky are retailers who must register with the Revenue Cabinet to obtain a retail sales and use tax permit and report and pay the applicable tax derived from the gross lease or rental receipts.

(2) Transitional rules. Effective July 1, 1990, the sales and use tax rate applicable to gross receipts from taxable leases and rentals of tangible personal property is increased to six (6) percent. However, the five (5) percent tax rate shall continue past July 1, 1990 for those receipts derived from lease or rental agreements entered into or before March 31, 1990. An exemption certificate is not required from the lessee for continuation of the five (5) percent tax rate, but business records of the lessor shall be retained to document that the lease or rental agreement was entered into on or before March 31, 1990. In the absence of such records, the lessee’s gross receipts from the lease or rental transaction shall be valued at the five (5) percent tax rate.

(3) Rentals—Tangible personal property purchased exclusively for lease or rental may be purchased for resale without payment of the tax at the time of purchase. Lessees must execute Revenue Form 61A106, Resale Certificate, to their suppliers. The purchase by lessors of parts and accessories which become part of the leased or rented property may also be purchased under a resale certificate. However, property purchased by a lessor to maintain leased or rented property of a lessee is subject to the tax. Tangible personal property purchased for resale without payment of the tax and to be utilized exclusively for lease or rental, and so used, but subsequently used by the retailer/lessor for some purpose other than lease or rental becomes subject to tax upon such use. The tax is the responsibility of the retailer/lessor and is measured by the purchase price of the property and is in addition to the tax due on the lease or rental receipts. When tangible personal property is purchased in part for lease or rental and in part for use, such property may not be purchased from a vendor under a resale certificate and is subject to tax. Receipts from the lease or rental of such property by the purchaser are also taxable. Retailers who purchase tangible personal property for outright sale, but, while holding such property in their inventory, use the property in their business through lease or rental, are responsible for the tax applicable to such lease or rental receipts. When tangible personal property is purchased by a person for use in conducting a retail activity and has not been acquired for resale, the tax applies at the time of purchase. If during the course of ownership of the property, lease or rental of the property occurs, such leases or rentals are subject to tax. The amount charged for any rooms, lodgings or accommodations furnished to transients by the operator of any apartment house, hotel, inn, motel, tourist camp, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration is subject to the sales tax. However, persons who rent such accommodations to transients for a consideration may not issue a resale certificate for the lease or rental of items such as beds, bedding, other furniture and equipment. Business enterprises which furnish accommodations to transients are the consumers of such leased or rented tangible personal property when tangible personal property has been purchased by a retailer engaged exclusively in leasing or renting such property and the retailer has paid the sales or use tax applicable to the purchase price of the property; a deduction may be taken from the retailer’s gross lease or rental receipts for amount equal to the purchase price of the property. The deduction is contingent upon the retailer using the property exclusively for lease or rental.

(4) Gross receipts. Gross receipts from the lease or rental of tangible personal property shall include the total amount of payment or payments received by the lessor from the lessee as well as payments paid by the lessee to a third party for the benefit of the lessor which are required by the terms of the agreement. Gross receipts from the lease or rental of tangible personal property include amounts designated by the lease or rental agreement as finance or interest charges, and all other itemized charges with the sole exception being being separately stated property tax and insurance charges. Charges by a lessor to a lessee for a separately executed maintenance agreement which is not a part of the lease or rental agreement are not subject to tax. Each period for which a lease or rental is payable shall be considered a complete transaction in determining a retailer’s responsibility for the tax in accordance with KRS 139.110(1)(a).

(5) Tax responsibility. Every retailer leasing or renting tangible personal property within this state is responsible for the sales tax applicable to gross lease or rental receipts. The retailer/lessor is required to collect the sales tax from the customer/lessee. Every out of state retailer leasing or renting tangible personal property for storage, use or other consumption in the state is required to collect the use tax from the purchaser and remit the tax on gross lease or rental receipts to the Revenue Cabinet. The lessee’s responsibility for the use tax is not relieved until payment of the amount due has been made to the Revenue Cabinet or to a retailer/lessor authorized to collect the Kentucky tax.

Section 2. Taxable Leases or Rentals. Leases and rentals of all kinds of tangible personal property, except motor vehicles and that property qualifying as farming equipment as provided in the sales and use tax law, are subject to the sales and use tax measured by the gross receipts derived from the lease or rental charge.

(1) Taxable leases or rentals include the following types of tangible personal property:

(a) Aircraft;
(b) Audio-visual equipment;
(c) Beverage and food dispensing equipment;
(d) Bicycles;
(e) Boats, canoes, houseboats, and sailboats;
(f) Bowling pin-setting equipment;
(g) Campers that are not registered motor vehicles;
(h) Camping equipment;
(i) Carpet and rug cleaning equipment;
(j) Construction equipment;
(k) Communications equipment;
(l) Computer hardware and software;
(m) Costumes;
(n) Formal wear;
(o) Garden and lawn equipment;
(p) Golf carts and clubs;
(q) Hospital equipment;
(r) Household appliances and furniture;
(s) Industrial equipment;
(t) Microphone and stage equipment;
(u) Musical instruments;
(v) Office machinery and equipment;
(w) Office trailers;
(x) Oxygen equipment;
(y) Pasty supplies;
(z) Physical therapy equipment;
(aa) Plants;
(bb) Portable buildings and sheds;
(cc) Portable toilets;
(dd) Riding horses, apparel and equipment;
(ee) Scaffolding;
(ff) Ski equipment;
(gg) Spraying equipment;
(hh) Telephones;
(ii) Televisions;
(jj) Tests;
(kk) Tools;
(ll) Video recorders and players;
(mm) Video tapes, cassettes and related items.

(2) The foregoing examples are for illustration and are not intended to be all inclusive. When lease or rental activity involves the lease or rental of real, tangible and intangible personal property, such as the lease or rental of a business operation or estab-
The total amount of the lease or rental receipts is subject to tax unless the amount applicable to the tangible personal property is separately stated. The amount separately stated for the tangible personal property cannot be less than the fair market lease or rental value for similar property for a similar rent or lease period. The lease or rental of tangible personal property between separate entities owned by the same or similar stockholders is subject to the tax unless otherwise exempted by the sales and use tax law. The tax is to be levied on the lease or rental amount charged to the real market lease or rental amount, whichever is greater.

Section 3—Nontaxable Rentals or Leases—(1) The lease or rental of real property and the performance of a service do not represent the lease or rental of tangible personal property. Nontaxable receipts include but are not limited to the following:

(a) Charges made for the use of a miniature golf course or golf driving range;
(b) Charges made for the rental of safety deposit boxes;
(c) Charges made for laundering or dry cleaning of apparel owned by customers;
(d) Charges made for the use of coin-operated laundry equipment;
(e) Charges made for the use of docks and docking facilities furnished for boats;
(f) Charges made for storage space in mini warehouses;
(g) Charges made for the rental of parking spaces in parking lots or garages;
(h) Charges made for the lease or rental of office space or an office building;
(i) Charges made for the lease or rental of furnished and unfurnished apartments;
(j) Charges made for the rental of linens, uniforms, towels and diapers where recurring cleaning is the essence of the rental agreement;
(k) Charges made for the cleaning of wall to wall carpet;
(l) Charges made for lawn care service;
(m) Charges made for a construction contract for erecting, remodeling, or repairing a building or other structure;
(n) Charges made for equipment and an operator to perform certain work specified by the customer where the customer does not take possession or have any direction or control over the physical operation of the work to be performed;
(o) Charges made for aircraft charters available to the general public;
(p) Charges made for use by individuals of amusement machines such as video games, pinball machines, etc.;
(q) Charges made for the use of video game machines owned by others;
(r) Charges made for the use of tanning beds;
(s) Charges made for computer time sharing;
(t) Charges made for the furnishing of space-on-utility poles for the attachment of cable television, telephone and utility lines.

(2) The foregoing partial list of nontaxable receipts must not be construed to have application beyond the circumstances presented. For example, if an individual enters a business establishment and makes use of a video game machine by inserting twenty-five (25) cents, the receipts from the charge are not taxable. However, the person who is utilizing the video machine in the business operation may lease or rent outright the machine from another person engaged in the business of leasing or renting such property. In this example, the amount or amounts paid to the video game machine owner/lessor by the business enterprise which made the machine available for use by the individual would represent taxable receipts from the lease or rental of tangible personal property.

Section 4—Exemptions. A lessor of tangible personal property should not include within the measure of the tax gross receipts from lease or rental if the lessor takes from the purchaser a certificate of exemption as evidence that the property purchased will be used in an exempt manner under the sales and use tax law. Sales and use tax exemptions for which the lessee may qualify include, for example, machinery for new and expanded industry, farm machinery, tangible personal property leased for use by certain religious, charitable, and educational institutions, historical sites, and units of the federal government, Kentucky state government and local governments within this state, and motion picture film rented or leased by commercial motion picture theaters for the sole purpose of use in the normal course of business for which an admission fee is charged and the theater collects and remits applicable sales and use taxes. When an out of state lessee leases tangible personal property from a Kentucky lessor for the purpose of using such property outside this state, and if the property is, in fact, used outside this state, the initial lease payment will be subject to the Kentucky sales tax if the property is delivered to the lessee in the state and immediately shipped overseas. The sales tax does not apply to gross receipts from leases or rentals in which the Kentucky lessor is obligated under the terms of the agreement with the lessee to make physical delivery of the property leased or rented from a point in this state to a point outside this state with no intention to return to a point within this state for use provided that such delivery is actually made. The delivery may be made by the lessor or by the lessee. In the case of bona fide common carriers, the lease or rental of equipment which enters this state in interstate commerce and which is used exclusively in interstate commerce thereafter is not subject to tax. Nominal use in intrastate commerce will not affect this exception.

Section 6—Motor Vehicles. The lease or rental of motor vehicles which are registered for use on the public highways and upon which any applicable tax levied under KRS 138.460 has been paid, is not subject to the sales or use tax. The applicable tax is the motor vehicle usage tax administered by the Revenue Cabinet. Motor vehicles which are not subject to the motor vehicle usage tax are subject to the sales and use tax.

Section 6—Reciprocity. The sales and use tax laws provide for credit against the Kentucky use tax for state sales tax paid in another state which imposes a sales tax substantially identical to Kentucky's, provided the other state has a sales and use tax reciprocity statute similar to Kentucky's. In the past, credit for sales and use tax paid in a state having a reciprocity statute similar to Kentucky's has been allowable when evidence was presented that the state sales or use tax was actually paid. In addition to this requirement, the taxing of lease and rental receipts necessitates additional requirements which have application only to lease and rental receipts. Reciprocity will apply to use tax due Kentucky on lease or rental receipts only if the reciprocal state has levied and is legally due the sales or use tax paid on lease or rental receipts derived from the storage, use or other consumption of property in Kentucky.

Section 7—Construction Machinery and Equipment. Persons engaged in the business of leasing or renting construction machinery and equipment are retailers responsible for reporting and remitting the sales and use tax. However, should the lessee's receipts from the lease or rental of construction machinery and equipment be nontaxable, the provisions of KRS 139.320 will apply to lessors of construction machinery and equipment brought into the state for use. KRS 139.320 levies a tax on construction machinery and equipment brought into Kentucky for use. KRS 139.320 levies a tax on construction machinery and equipment brought into Kentucky for use in construction projects. This use tax, which is separate and distinct from the normal use tax (KRS 139.310), is levied in the case of leased and rented machinery and equipment upon the lessor based upon the lease or rental payments made to an out of state lessor. The provisions of KRS 139.320 will still apply to any lease or rental of construction machinery and equipment. When reciprocity requires the recognition of a tax credit against the tax levied under KRS 139.310 as set forth in Section 6 of this ad
VOLUME 32, NUMBER 1 – JULY 1, 2005

Robbie Rudolph, Secretary
APPROVED BY AGENCY: June 9, 2005
FILED WITH LRC: June 15, 2005 at noon
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 2005 at 10 a.m. at the Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed regulation to the contact person.

CONTACT PERSON: Edward A. Mattingly, Director, Division of Legislative Services, Department of Revenue, 200 Fair Oaks Lane, Station 8, Frankfort, Kentucky 40601, phone (502) 564-6843, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Edward A. Mattingly

(1) Provide a brief summary of:
(a) What this administrative regulation does:
Interprets sales and use tax laws as related to leases and rentals of tangible and personal property.
(b) The necessity of this administrative regulation:
This administrative regulation is necessary to conform existing sales and use tax regulations to the Streamlined Sales Tax Agreement.
(c) How this administrative regulation conforms to the content of the authorizing statutes:
This regulation is a direct response to the adoption of the Streamlined Sales Tax Agreement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation will give parties a better idea of the applicable sales and use tax on leases and rentals.
(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 replaces completely the language of the current regulation.
(b) The necessity of the amendment to this administrative regulation:
The current regulation no longer matches the newly adopted provisions of the Streamlined Sales Tax Agreement.
(c) How the amendment conforms to the content of the authorizing statutes:
The Department of Revenue is required to promulgate administrative regulations under KRS 131.130.
(d) How the amendment will assist in the effective administration of the statutes:
The emergency amendment clarifies for all parties the applicability of sales and use tax to leases and rentals of tangible personal property.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
This regulation would affect any company engaged in leasing, such as construction companies, or companies that rent or lease tangible personal property.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:
This emergency amendment will clarify the applicability of sales and use tax to leases and rentals of tangible personal property.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial:
The Department of Revenue will not incur additional costs as the result of this regulation.
(b) On a continuing basis:
The Department of Revenue will not incur additional costs as the result of this regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?
The Department of Revenue 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 in fees or funding will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:
This administrative regulation does not establish or increase any fees either directly or indirectly.
(9) TIERING: Is tiering applied? Tiering was not applied. This emergency administrative regulation deals with sales and use tax, which is applied uniformly to all taxpayers by law.

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

200 KAR 2:006. Employees’ reimbursement for travel.

RELATES TO: KRS 44.060, 45.101
STATUTORY AUTHORITY: KRS 44.060, 45.101
NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate an administrative regulation that establishes requirements and reimbursement rates for the travel expenses of state employees. This administrative regulation establishes the eligibility requirements relating to rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury.

Section 1. Definitions. (1) "Agency" means a budget unit.
(2) "Agency head" means the elected or appointed head of a budget unit.
(3) "Approval" means approval granted in either written or electronic format.
(4) "Cabinet" means the Finance and Administration Cabinet.
(5) "Division" means the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet.
(6) "High rate area" means a city, state, or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area and included in the cabinet's policies and procedures manual incorporated by reference in 200 KAR 5.021.
(7) "Incidental expense" means unexpected minor expenses arising from travel situations, or minor expenses authorized by an agency head to be reimbursed to an employee as a matter of efficiency or convenience.
(8) " Lodging receipt" means any preprinted invoice, from a hotel or motel or type of lodging, showing the date of service, the amount charged for the service, the location where the service was performed, and a description of the expenditure.
(9) "Others in the official service of the commonwealth" means individuals who are not state employees as defined in KRS Chapter 18A, but who are traveling on official business for the commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request and does not include contractors who shall be entitled to reimbursement of travel and other expenses only as provided in their contracts with the commonwealth.
(10) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the
VOLUME 32, NUMBER 1 - JULY 1, 2005

service was performed and a description of the expenditure.

(11) "Residence" means address of the employee designated in the official records of the Personnel Cabinet.

(12) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(13) "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

(14) "Subsistence or incidental receipt" means an itemized receipt for meals or incidental expenses showing the date of service, amount charged, and the name of the establishment.

(15) "Travel software" means the software used by the commonwealth to process travel authorizations and travel reimbursement documents.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.

(2) Enforcement. (a) Each agency head shall be responsible for ensuring that travel reimbursement conforms to the provisions of this administrative regulation and that all travel expense from that agency is as economical as is feasible.

(b) A person who travels on official state business shall:
1. Identify if reimbursement is being requested based on Section 7 or 8 of this administrative regulation;
2. Prior to trip, create a Travel Authorization (TE, TEI, TEO, or TEC), if required;
3. After travel, create a Travel Payment Voucher (TP or TPI) document for reimbursement of business related expenses;
4. Maintain records and receipts to support the claim; and
5. Take sufficient personal funds to defray the travel expense.

(c) The secretary or designee may:
1. Disallow or reduce the amount of a claim that violates the provisions of this administrative regulation; or
2. Require written justification for amounts claimed by an agency for its employee.

(d) The secretary or his designee may authorize reimbursement for an employee’s actual and necessary expenses for authorized travel if the head of the agency, or designee, submits a written determination that establishes the reimbursement is:
1. Required to avoid an undue economic hardship on the employee; or
2. Economically advantageous for the commonwealth.

(3) Eligibility. Except as provided by state law or by this administrative regulation, reimbursement shall not be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the commonwealth. Only necessary expenses of official travel authorized by an agency head or designee shall be reimbursed.

(4) Interpretation. All final interpretations of this administrative regulation shall be made by the secretary. These determinations shall be final and conclusive.

Section 3. Work Station. (1) The official work station of an employee assigned to an office shall be the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the commonwealth.

(3) If an employee is permanently reassigned or is stationed at a new location two (2) months, the new location shall become that employee’s official work station.

Section 4. Authorizations. (1) For travel in Kentucky, or outside Kentucky, but within the United States or its possessions, or Can-

ada, the person requesting reimbursement shall obtain authorization from the agency head or a designated representative as authorized by Secretary’s Order S97-451.

(2) Travel to a bordering state that does not require airfare or an overnight stay shall be authorized in the same manner as travel in Kentucky.

(3) Travel expenses shall be reimbursed if travel was authorized in advance as provided by subsections (4), (5), and (5) of this section.

(4) If direct billing is to be utilized for state park and motor pool expenses, authorization shall be requested on a Travel Authorization (TE or TEI) document.

(5) For travel outside of Kentucky, authorization shall be requested on Travel Authorization (TEO) document.

For travel outside the United States, its possessions or Canada the person requesting reimbursement shall have obtained authorization from:

(a) The agency head or a designated representative;
(b) The secretary or a designated representative; and
(c) The governor or a designated representative.

(7) A travel request for travel specified in subsections (4) and (5) of this section shall be received by the agency or cabinet at least five (5) working days before the start of travel.

Section 5. Transportation. (1) Economy shall be required.

(a) State officers, agents, employees, and others in the official service of the commonwealth shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes shall be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

2. A ticket paid for by the commonwealth shall be purchased through agency business travel accounts provided by a major charge card company or commercial travel agencies.

(b) Tickets purchased through the Internet shall be paid by the traveler and reimbursed on a Travel Payment Voucher (TP or TPI).

3. Exceptions may be made with the approval of the agency head if other arrangements will be in the best interest of the commonwealth.

4. Agencies shall be billed monthly by the charge card company.

5. Related payments shall be processed on Vendor Payment Voucher (VP) document.

(2) State vehicles State-owned vehicles with their credit cards shall be used for state business travel when available and feasible. Mileage payment shall not be claimed if state-owned vehicles are used.

(b) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles shall be allowed if a state vehicle was not available or feasible.

(4) Buses, subways. For city travel, employees shall be encouraged to use buses and subways. Taxi fare shall be allowed if more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach or tourist class. Additional expense for first-class travel shall not be reimbursed by the state. Payment shall be made in accordance with subsection (1)(b) of this section.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed if written justification from the employee is submitted and approved by the agency head or his designated representative.

(b) Privately-owned aircraft may be used if it is determined to be to the advantage of the state, measured both by travel costs and travel time.

(c) An employee may submit a written request for approval from the State Controller for an increased reimbursement rate greater than that calculated in Section 7, if the employee drives a personal vehicle modified to:

1. Facilitate operation by altering controls for the brakes, accelerator, or steering wheel; or
2. Allow a driver to enter the vehicle by installing a wheelchair lift, hoist, or ramp.
Section 6. Accommodations. (1) Lodging shall be the most economical, as determined by considering location of the lodging.
(2) Facilities providing special government rates or commercial rates shall be used if feasible.
(3) State-owned facilities shall be used for meetings and lodging if available, practicable and economical.
(4) Location. Cost for lodging within forty (40) miles of the claimant’s official work station or home shall be reimbursed if in attendance at a conference [approved in advance by the agency head, or a designated representative]
(5) Group lodging, by contract.
(a) State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates shall be requested.
(b) The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this administrative regulation.
(c) The traveler shall not claim reimbursement or subsistence for room and meals paid direct to an establishment providing these services.
(d) Payment shall be made on a Vendor Payment Voucher (P1) document and shall not include personal charges of employees or others in the official service of the Commonwealth.
(e) Payment shall be made to the hotel, motel, or other establishment.
(f) Contracted group meeting rooms and lodging and meal charges shall be exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Department of Revenue shall be specified on the payment document.
(g) Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs. Sales tax payments shall be reimbursed on Travel Payment Voucher (TP or TPI) document.

Section 7. Reimbursement Rates. (1) The following persons shall be exempted from the provisions of this section:
(a) Governor;
(b) Governor’s staff;
(c) Lieutenant governor;
(d) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;
(e) Elected constitutional officers;
(f) Cabinet secretaries;
(g) State officers and employees authorized to travel outside the United States;
(h) Members of statutory boards and commissions; and
(i) Others in the official service of the Commonwealth.
(2) Lodging.
(a) Except as provided in paragraph (b) of this subsection, a state officer or employee shall be reimbursed for the actual cost of lodging if the:
1. Lodging is determined to be the most economical; and
2. State officer or employee has provided the hotel, motel, or other establishment’s receipt to be reimbursed for the travel expenses.
(b) Reimbursement for lodging shall not exceed the cost of a single room rate, except that if employees share lodging, each employee shall be reimbursed the lesser of single rate or one-half (1/2) the double rate.
(3) Subsistence and incidentals.
(a) Breakfast and lunch. A state officer or employee shall be eligible for reimbursement for subsistence for breakfast and lunch expenses while traveling in Kentucky, if authorized work requires an overnight stay and absence during the mealtime established by paragraph (d) or (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.
(b) Dinner expenses. A state officer, or employee shall be eligible for reimbursement for dinner expenses while traveling in Kentucky, if authorized work requires an absence:
1. At a destination more than forty (40) miles from the individual’s work station and home; and
2. During the mealtime established by paragraph (d) or (e) of this subsection.
(c) A state officer or employee shall be eligible for reimbursement for meals while on authorized travel outside Kentucky, but within the United States, its possessions or Canada, at the reimbursement rates established in paragraphs (d) and (e) of this subsection. An employee shall be in travel status during the entire mealtime. For example, to be eligible for breakfast reimbursement, an employee shall leave at or before 6:30 a.m. and return at or after 9 a.m. This requirement shall apply to all meals.
(d) Reimbursement for non-high rate areas:
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - seven (7) dollars.
2. Lunch: authorized travel 11 a.m. through 2 p.m. - eight (8) dollars.
3. Dinner: authorized travel 5 p.m. through 9 p.m. - fifteen (15) dollars.
(e) Reimbursement for high rate areas.
1. Breakfast: authorized travel 6:30 a.m. through 9 a.m. - eight (8) dollars.
2. Lunch: authorized travel 11 a.m. through 2 p.m. - nine (9) dollars.
3. Dinner: authorized travel 5 p.m. through 9 p.m. - nineteen (19) dollars.
(f) A state officer or an employee authorized to travel outside the United States, its possessions, or Canada shall be reimbursed for their actual and necessary expenses for subsistence.
(g) A state officer or an employee may, with prior approval of the agency head or designee, be reimbursed for the actual cost charged for meals, if the individual is assigned to attend meetings and training sessions.
(h) Gratuities may be reimbursed if:
1. The total payment of the meal and gratuity does not exceed the limits established in paragraphs (d) or (e) of this subsection; and
2. The gratuity does not exceed twenty (20) percent of the cost of the meal.
(i) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).
(4) Transportation expenses.
(a) Reimbursement for authorized use of a privately-owned vehicle shall:
1. Be adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline cost reported on June 1, 2004, and adjusted thereafter on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:
   a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-two (32) cents per mile.
   b. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-three (33) cents per mile.
   c. If the fuel cost is between one dollar seventy cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-four (34) cents per mile.
   d. If the fuel cost is between one dollar ninety cents ($1.90) and two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-five (35) cents per mile.
   e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed thirty-six (36) cents per mile.
   f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate.
2. Not exceed the cost of commercial coach round-trip airfare.

-118-
VOLUME 32, NUMBER 1 – JULY 1, 2005

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

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

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

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

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

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

(g) Reimbursement shall be made for reasonable incidental expenses for:

1. Baggage handling;
2. Delivery of baggage to or from a common carrier, lodging or storage and;
3. Overweight baggage charges, if the charges relate to official business.

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

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

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

6(b) Telephone calls to agency central offices shall be made through:

1. Agency 800 and 888 numbers, if available;
2. A state government telephone credit card, or;
3. Lowest available service.

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

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

(a) Governor;
(b) Governor's staff;
(c) Lieutenant governor;
(d) Elected constitutional officers;
(e) Cabinet secretaries;

(f) State employees traveling on assignment with the governor, lieutenant governor, elected constitutional officers, or cabinet secretaries;

(g) State officers and employees authorized to travel outside the United States, its possessions or Canada.

(h) Members of statutory boards and commissions; and

(i) Others in the official service of the Commonwealth.

(2) Actual and necessary expenses of official business travel shall be reimbursed upon submission of receipts for items over ten (10) dollars. The secretary may reduce the amount of any actual expense to be reimbursed if the secretary determines that the expense is unreasonably excessive.

(b) Actual and necessary expenses for official business travel shall include:

1. Lodging;
2. Meals;
3. Commercial transportation;
4. Taxes related to actual and necessary expenses; and
5. Reasonable gratuities.

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

(d) Reimbursement for official use of a privately-owned vehicle shall:

1. Be adjusted based on the American Automobile Association (AAA) Daily Fuel Gauge Report for Kentucky for regular grade gasoline cost reported on June 1, 2004, and adjusted thereafter on January 1, April 1, July 1, and October 1 each calendar year based on the average retail price of regular grade gasoline for the week beginning on the second Sunday of the prior month as follows:

   a. If the fuel cost is between one (1) cent and one dollar forty-nine and nine-tenths cents ($1.499), the employee shall be reimbursed thirty-two (32) cents per mile.

   b. If the fuel cost is between one dollar fifty cents ($1.50) and one dollar sixty-nine and nine-tenths cents ($1.699), the employee shall be reimbursed thirty-three (33) cents per mile.

   c. If the fuel cost is between one dollar seventy-five cents ($1.70) and one dollar eighty-nine and nine-tenths cents ($1.899), the employee shall be reimbursed thirty-four (34) cents per mile.

   d. If the fuel cost is between one dollar ninety-five cents ($1.90) and two dollars nine and nine-tenths cents ($2.099), the employee shall be reimbursed thirty-five (35) cents per mile.

   e. If the fuel cost is between two dollars ten cents ($2.10) and two dollars twenty-nine and nine-tenths cents ($2.299), the employee shall be reimbursed thirty-six (36) cents per mile.

   f. If the fuel cost is greater than two dollars twenty-nine and nine-tenths cents ($2.299), the amount the employee is reimbursed shall increase one (1) cent for every twenty (20) cent increase in the rate.

   2. Not exceed the cost of commercial coach round-trip airfare.

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

3. The secretary or the secretary's designee may:

   a. Question a claim for reimbursement; and

   b. Reduce the amount to be reimbursed, if the secretary determines that it is unreasonably excessive.

(f) An employee of the Economic Development Cabinet or the Commerce Cabinet shall be reimbursed for actual and necessary costs of entertaining official business guests of the Commonwealth if the costs were:

1. Related to the promotion of industry, travel, or economic development;
2. Substantiated by receipts; and
3. Certified by the head of the cabinet.

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

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

1. Residence and travel destination; or
2. Work station and travel destination.

(b) If an employee's point of origin for travel is the employee's work station, and after proceeding to a travel destination, the employee's final destination is the employee's residence, mileage shall be paid for the shorter of mileage between:

1. Residence and travel destination; or
2. Workstation and travel destination.

(3) Vicinity travel and authorized travel within a claimant's work station shall be listed on separate lines on the Travel Payment Voucher (TP or TPI) document.

Section 10. Travel Documents. (1) Travel software shall have three (3) types of authorizations:

(a) TE or TEI for in-state travel;
(b) TEC for out-of-state travel; and
(c) TEC for out-of-country foreign travel.

(2) A traveler shall create a:

(a) Travel authorization (TE or TEI) document if a state park facility or a motor pool vehicle will be used or if a registration fee is to be paid in advance.

(b) Travel authorization (TEO) document for an out-of-state trip.

(c) Travel authorization (TEC) document for an out-of-country trip.

(3) A contract for group accommodations shall be made on the standard form used by the establishment providing the services.

(4) Authorization for reimbursement of others in the official service of the Commonwealth shall be requested on:

(a) A Vendor Payment Voucher (P1) document; or
(b) A Travel Payment Voucher (TP or TPI) document.
(5) A Travel Payment Voucher (TP or TPI) document shall be used to claim reimbursement for travel expenses.
(6) The Travel Payment Voucher (TP or TPI) document shall be limited to the expenses made by one (1) person for the:
(a) Traveler; and
(b) If applicable, another person:
1. Who is a ward of the commonwealth; or
2. For whom the traveler is officially responsible.
(7) A Travel Payment Voucher (TP or TPI) document for expenses made for a person specified in subsection (6)(b) of this section shall include the person's:
(a) Name; and
(b) Status or official relationship to the claimant's agency.
(8)(a) A Travel Payment Voucher (TP or TPI) document shall be submitted:
1. For one (1) major trip; or
2. Every two (2) weeks for employees that are in travel status for an extended period.
(b) A Travel Payment Voucher (TP or TPI) document shall include:
1. Social Security number of the claimant; and
2. Purpose of each trip.
(c) A Travel Payment Voucher (TP or TPI) document shall be signed and dated, or entered electronically and approved by the:
1. Claimant, and
2. Agency head or authorized representative.
(d) If monthly expenses total less than ten (10) dollars, a Travel Payment Voucher (TP or TPI) may include expenses for six (6) months of a fiscal year.
(e) A Travel Payment Voucher (TP or TPI) document shall be:
1. Legibly printed in ink or typed; or
2. Processed electronically through travel software.
(f) A receipt shall provide the following information for each expense:
1. Amount;
2. Date;
3. Location; and
4. Type.
(g) Receipts shall be maintained at the agency if documents are processed electronically.
(h) If leave interrupts official travel, the dates of leave shall be stated on the Travel Payment Voucher (TP or TPI).
(ii) Lodging receipts, or other credible evidence, shall be attached to the Travel Payment Voucher (TP or TPI).

Section 11. Incorporation by Reference. (a) Travel Payment Voucher (TP or TPI) document (1999);
(b) Travel Authorization (TE or TEL) document for in-state travel (1999);
(c) Travel Authorization (TEO) for out-of-state travel (1999);
(d) Travel Authorization (TEC) document for out-of-country travel (1999);
(e) Vendor Payment Voucher (P1) (1999);
(f) Internal Travel Voucher (ITV) document (1999);
(g) Kentucky Official Highway Map (2004);
(h) Rand McNally Road Atlas (2001) and
(i) Secretary's Order S97-451, November 1, 1996.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Statewide Accounting Services, Office of the Controller, Finance and Administration Cabinet, Capitol Annex Building, Room 484 [384], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

R.B. RUDOLPH, Secretary
APPROVED BY AGENCY: June 13, 2005
FILED WITH LRC: June 14, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on July 27, 2004, at 10:30 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by July 20, 2004, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson
(1) Provide a brief summary of:
(a) What this administrative regulation does: Reimburses state employees' travel expenses.
(b) The necessity of this administrative regulation: KRS 45.101 authorizes the Finance and Administration Cabinet to promulgate administrative regulations relating to eligibility, requirements, rates and forms for reimbursement of travel expenses and other expenses incidental to official duties and functions of the State government.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel.
(d) Whether this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation specifies eligibility, requirements, rates and forms for reimbursement of travel.

(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) The amendment conforms to the content of the authorizing statutes:
(d) Whether the amendment will assist in the effective administration of the statutes:
(e) Whether the amendment will clarify the regulation and be easier to administer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
(a) Except as otherwise provided by law, this administrative regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the executive branch of state government, except state-supported universities. It shall not apply to the legislative and judicial branches and their employees.
(b) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be minimal impact except we will be giving all lodging facilities an opportunity to compete for state conference business.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional cost.
(b) On a continuing basis: There will be no additional cost.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General 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; None required.
(8) State whether or this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

GENERAL GOVERNMENT CABINET
Real Estate Appraisers Board
(Amendment)

201 KAR 30:050. Examination, education, and experience requirement.

RELATES TO: KRS 324A.035(1), (3), 324A.040(2), 12 U.S.C. 3331-3351
STATUTORY AUTHORITY: KRS 324A.020, 324A.035(1), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(1) requires the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally-related transactions. KRS 324A.035(2)(b), (e), and (f) require the board to establish by administrative regulations requirements for experience, examination of applicants, and continuing education of appraisers. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. 3331-3351, establishes requirements for certification or licensure of appraisers of real property in federally-related transactions. This administrative regulation establishes the examination, education, and experience requirements for appraisers of real property in federally-related transactions.

Section 1. Examination. (1) An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, or licensed real property appraiser shall pass an examination specific for the certification or license applied for and approved by:
(a) The board, and
(b) The Appraiser Qualifications Board of the Appraisal Foundation.
(2) Scores from the examinations shall be acceptable for two (2) years.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 180 hours of approved instruction.
(2) An applicant for the certified residential real property appraiser examination shall have completed 120 hours of approved instruction.
(3) An applicant for the licensed real property appraiser examination shall have completed ninety (90) hours of approved instruction.
(4) An applicant for a license as an associate real property appraiser shall have completed seventy-five (75) hours of approved instruction.
(5) (a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.
(b) Required hours of instruction shall have been completed prior to examination.
(6) The required hours of instruction for every applicant shall:
(a) Include at least:
1. Fifteen (15) hours related to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and
2. Fifteen (15) hours related to basic income; and
(b) Be completed in an orderly progression of appraisal concepts and coursework commencing with basic appraisal courses and progressing to advanced courses.
1. The initial instructional course shall cover basic principles of appraising.
2. The fifteen (15) hours of instruction on the Uniform Standards of Professional Appraisal Practice required by paragraph 7 of this section, shall not be taken until after the instructional course covering basic principles of appraising has been completed.
(2) The 15-hour National Uniform Standards of Professional Appraisal Practice Course
(a) An applicant shall take the 15-Hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent, pass the associated 15-hour National Uniform Standards of Professional Appraisal Practice Examination as approved by the Appraiser Standards Board of the Appraisal Foundation.
(b) Equivalency for the 15-hour National Uniform Standards of Professional Appraisal Practice Course shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternative method established by the Appraiser Qualifications Board.
(c) Uniform Standards of Professional Appraisal Practice prelicensing education credit shall only be awarded when the class is instructed by an Appraiser Qualifications Board Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:
(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation, incorporated by reference in 201 KAR 30:040;
(2) Cover topics included in the Uniform Standards of Professional Appraisal Practice, as incorporated by reference in 201 KAR 30:040;
(3) For certified general real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties;
(4) Include coverage of:
(a) Influences on real estate value;
(b) Legal consideration in appraisal;
(c) Types of value;
(d) Economic principles;
(e) Real estate markets and analysis;
(f) Valuation process;
(g) Property description;
(h) Highest and best use analysis;
(i) Appraisal statistical concepts;
(j) Sales comparison approach;
(k) Site value;
(l) Cost approach;
(m) Income approach, including:
1. Gross rent multiplier analysis;
2. Estimation of income and expenses;
3. Operating expense ratios; and
4. Direct capitalization;
(n) Valuation of partial interests;
(o) Appraisal standards and ethics; and
(p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:
(a) It is approved by the board;
(b) It complies with the provisions of this administrative regulation;
(c) It is documented by the applicant;
(d) It is a course that requires at least fifteen (15) hours of instruction; and
(e) The applicant has passed a written examination of the subject matter of the course.
(2) (a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.
(b) A teacher of appraisal courses who wishes to receive credit shall:
1. File a written request with the board for receipt of credit; and
2. Document the appraisal courses taught by title, date, place taught, and length of course
(3) The board shall grant credit for courses to an applicant if:
(a) The applicant received credit from the course provider by challenge examination;
(b) The credit was granted by the course provider prior to July 1, 1990; and
(c) The board is satisfied with the quality of the challenge examination administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:
(a) Colleges or universities;
(b) Community or junior colleges;
(c) Real estate appraisal or real estate related organizations;
(d) State or federal agencies or commissions;
(e) Proprietary schools; or
(f) Other providers.
(2) A provider shall be approved by the board if the provider:
(a) Applies to the board for approval on the "Appraisal Education Provider Application Form"; and
(b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser, an applicant shall have acquired 3,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than thirty (30) calendar months
(b) Prior to certification as a residential real property appraiser, an applicant shall have acquired 2,500 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.
(c) Prior to licensure as a licensed real property appraiser, an applicant shall have acquired 2,000 hours of appraisal experience. This experience shall not be acquired in a period of fewer than twenty-four (24) calendar months.
(d) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.
(e) For certification as a general real property appraiser, at least 1,500 hours of appraisal experience shall consist of nonresidential appraisal experience.
(f) Real property appraisal assignments completed for experience credit shall be completed:
1. In compliance with the requirements of USPAP as incorporated in KAR 30:050 and defined in KRS 324.010(7); and
2. Under the supervision of a licensed or certified real property appraiser.
(g) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board as one (1) of the types of appraisers identified in KAR 30:050 Section 1(2), (3) or (4).
(2)(a) An applicant shall verify experience credit in a form approved by the board.
(b) The board may request reports, file memoranda, and other documentation, if necessary to confirm the applicant's appraisal experience.
(3) The requirements of USPAP shall not apply to the board, its agents, and employees when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation in accordance with the exception established in the Jurisdictional Exception Rule of USPAP.
(4) A jurisdictional exception from the requirements of USPAP for the review of appraisals for applications and experience audits under this administrative regulation.

Section 7. Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, licensed real property appraisers, and associate real property appraisers shall:
(1) Complete fourteen (14) hours of approved continuing education each license year; and
(2) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for:
(a) Approved continuing education courses; or
(b) Participation, other than as a student, in appraisal education programs and processes.
(2) Appraisal educational programs and processes shall include:
(a) Teaching;
(b) Program development;
(c) Authorship of textbooks; or
(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.
(3) Continuing education credit shall be granted if a course:
(a) Is at least two (2) hours in duration;
(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and
(c) Has been approved by the board.
(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.
(5)(a) All certificate holders shall successfully complete the 7-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, at a minimum of every (2) two years.
(b) Equivalency shall be determined through the Appraiser Qualifications Board Course Approval Program or by an alternate method established by the Appraiser Qualifications Board.
(c) USPAP continuing education credit shall only be awarded when the class is instructed by an AGS Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

Section 9. Incorporation by Reference (1) "Appraisal Education Provider Application Form" (2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 2480 Fortune Drive, Suite 120, Lexington, Kentucky 40509, (859) 543-8943, Monday through Friday, 9 a.m. to 4:30 p.m.

C.W. WILSON, Chair
APPROVED BY AGENCY: May 27, 2005
FILED WITH LRC: June 10, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 2005 at 1 p.m., at 2480 Fortune Drive, Suite 120, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 2005, five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON. Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2480 Fortune Drive, Suite 120, Lexington, Kentucky, phone (859) 543-8943, fax (859) 543-0028.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: James J. Grawe
(1) Provide a brief summary of
(a) What this administrative regulation does: This administrative regulation establishes the examination, education, and experience requirements for certification.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and to identify the examination, education, and experience requirements for certified and licensed appraisers.
VOLUME 32, NUMBER 1 – JULY 1, 2005

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the examination, education, and experience requirements.

(2) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the board in administering this program by identifying the examination, education, and experience requirements for applicants.

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

(a) How the amendment will change this existing administrative regulation: The amendment specifies certain courses required for certification and renewal.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to specify the course requirements for applicants and renewal of certification.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations necessary for certification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist by clearly identifying the educational requirements for applicants and renewal of certification for certificate holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 300 persons currently training for certification by the board and 1,800 certificate holders.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Applicants will be better trained for certification and the organized course of study envisioned by the regulation will reduce the number of failing grades on the examination.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all certificate holders in the class.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.560, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures, June 3, 2005 [January 12, 2006]" are incorporated by reference. Department of Corrections Policies and Procedures include:

1.1 Legal Assistance for Corrections Staff (Amended 6/3/05 [Effective 7/28/04])
1.2 News Media (Amended 6/3/05 [Effective 7/13/06])
1.4 The Monitoring and Operation of Private Prisons (Amended 6/3/05 [Effective 4/16/03])
1.9 Institutional Duty Officer (Amended 6/3/05 [Effective 7/28/04])
1.11 Population Counts and Reporting Procedures (Amended 4/15/03)
1.12 Operation of Motor Vehicles by Department of Corrections Employees (Amended 6/3/05 [Effective 8/16/04])
2.1 Inmate Canteen (Effective 12/17/98)
2.2 Warden's Fund (Effective 7/28/92)
2.10 Surplus Property (Effective 7/28/92)
3.1 Code of Ethics (Amended 6/3/05 [2/13/04])
3.3 Holding of Second Jobs by Corrections' Employees (Amended 6/3/05 [Effective 4/12/96])
3.4 Equal Employment Opportunity Complaint Procedure (Amended 6/3/05 [Effective 7/15/02])
3.5 Sexual Harassment and Anti-Harassment (Amended 6/3/05 [Effective 4/14/98])
3.6 Background Investigation and Employment of Exoffenders (Amended 4/12/05)
3.7 Shift, Post [Shifts, Posts] and Days Off Assignment (Amended 6/3/05 [Effective 8/16/99])
3.10 Appearance and Dress for Nonuniformed Staff (Amended 11/5/04)
3.11 Drug Free Workplace Employee Drug Testing (Amended 6/3/05 [11/6/04])
3.12 Institutional Staff Housing (Amended 6/3/05 [Effective 8/16/04])
3.15 Anti-harassment Policy (Effective 6/14/01)
3.16 Employee Health Issues (Added 4/12/05)
3.18 Employee Insurance Coverage (Amended 6/3/05 [Effective 4/14/03])
3.20 Communication and Recording Devices (Amended 6/3/05 [Effective 3/18/99])
3.22 Staff Sexual Misconduct (Amended 6/3/05 [2/13/04])
4.2 Staff Training and Development (Amended 4/12/05)
4.3 Firearms and Chemical Agents Training (Amended 4/12/05)
4.6 Operation and Safety of Corrections Firing Ranges (Effective 11/17/03)
4.7 Uniformed Employee Dress Code (Amended 6/3/05 [Effective 2/10/97])
5.1 Research and Survey Projects (Amended 6/3/05 [Effective 7/16/92])
5.6 Open Records Law (Amended 6/3/05 [Effective 4/14/03])
5.7 E-mail and Internet Use (Amended 6/3/05 [Effective 6/28/04])
7.2 Asbestos Abatement (Amended 6/3/05 [Effective 8/14/01])
8.1 Occupational Exposure to Bloodborne Pathogens (Effective 1/21/93)
8.2 Fire Safety (Effective 2/15/01)
8.6 Extraordinary Occurrence Report (Amended 6/10/03)
8.7 Notification of Extraordinary Occurrence (Amended 11/5/04)
9.4 Transportation of Inmates to Funerals or Bedside Visits (Amended 11/5/04)
9.5 Execution (Amended 6/3/05 [Effective 12/17/98])
9.6 Contraband (Effective 4/15/97)
9.8 Search Policy (Effective 4/15/97)
9.18 Informants (Effective 9/15/97)
9.19 Found Lost or Abandoned Property (Effective 9/15/97)
9.20 Electronic Detection Equipment (Effective 1/16/03)
10.2 Special Management Inmates (Amended 11/5/04)
10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
11.2 Nutritional Adequacy of Inmate Diet (Amended 6/3/05)
11.4 Alternative Dietary Patterns (Amended 6/3/05 [Effective 7/16/05])
13.1 Pharmacy Policy and Formulary (Effective 7/28/92)
13.2 Health Maintenance Services (Amended 4/12/05)
13.3 Medical Alert System (Effective 1/1/03)
13.4 Health Program Audit (Effective 7/22/05)
13.5 Advance Healthcare Directives (Added 4/12/05)
13.6 Sex Offender Treatment Program (Amended 6/2/05 [Effective 12/17/00])
13.7 Voluntary Psychotropic Medication Policy (Effective 12/7/95)
13.8 Substance Abuse Treatment Program (Effective 12/17/98)
13.9 Dental Services (Effective 1/1/03)
13.10 Serious Infectious Disease (Amended 2/13/04)
13.11 Do Not Resuscitate Order (Amended 6/3/05)
14.1 Investigation of Missing Inmate Property (Effective 9/15/97)
14.2 Personal Hygiene Items (Effective 9/15/97)
14.3 Mange of Inmates (Effective 4/15/97)
14.4 Legal Services Program (Amended 2/13/04)
14.5 Board of Claims (Effective 2/15/01)
14.6 Inmate Grievance Procedure (Amended 9/15/04)
14.7 Sexual Abuse Prevention and Intervention Programs (Added 4/12/05)
15.1 Hair, Grooming and ID Card Standards (Effective 2/19/01)
15.2 Rule Violations and Penalties (Amended 4/15/03)
15.3 Mental Health Time (Effective 2/13/04)
15.5 Restoration of Forfeited Good Time (Effective 9/16/99)
15.6 Adjustment Procedures and Programs (Amended 4/15/03)
15.7 Inmate Account Restriction (Amended 4/15/03)
15.8 Unauthorized Substance Abuse Testing (Effective 1/16/03)
16.1 Inmate Visits (Amended 6/3/05 [9/15/04])
16.2 Inmate Correspondence (Amended 2/13/04)
16.3 Inmate Access to Telephones (Amended 6/3/05 [Effective 4/14/00])
16.4 Inmate Packages (Amended 6/3/05 [2/4/04])
17.1 Inmate Personal Property (Amended 6/3/05 [11/8/04])
17.2 Assessment Center Operations (Amended 4/15/03)
17.3 Controlled Intake of Inmates (Amended 1/12/05)
17.4 Administrative Remedies: Sentence Calculations (Amended 2/13/04)
18.1 Classification of the Inmate (Amended 4/12/05)
18.2 Central Office Classification Committee (Effective 9/14/99)
18.5 Custody and Security Guidelines (Amended 4/15/03)
18.7 Transfers (Amended 2/13/04)
18.9 Out-of-state Transfers (Effective 8/15/01)
18.11 Placement for Mental Health Treatment in CPTU or KCPC (Effective 12/19/01)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Effective 11/17/00)
18.13 Population Categories (Effective 8/15/01)
18.15 Protective Custody (Amended 1/12/05)
18.16 Information to the Parole Board (Effective 12/19/01)
18.17 Interstate Agreement on Detainers (Effective 2/17/95)
18.18 International Transfer of Inmates (Effective 8/15/01)
19.1 Governmental Services Program (Amended 4/15/03)
19.2 Sentence Credit for Work (Added 2/13/04)
19.3 Inmate Wage/Time Credit Program (Amended 1/12/05)
20.1 Educational Programs and Educational Good Time (Amended 6/3/05 [Effective 4/16/03])
22.1 Privilege Trips (Effective 7/28/92)
23.1 Religious Programs (Amended 5/3/05 [Effective 4/16/03])
25.1 Gratuities (Effective 7/28/92)
25.2 Public Official Notification of Release of an Inmate (Amended 4/15/03)
25.3 Prerelease Program (Effective 7/28/02)
25.4 Institutional Inmate Furloughs (Amended 2/13/04)
25.6 Community Center Program (Effective 12/19/01)
25.8 Extended Furlough (Amended 4/12/05)
25.10 Administrative Release of Inmates (Effective 11/1/96)
25.11 Victim Notification (Effective 12/19/01)
26.1 Citizen Involvement and Volunteer Service Program (Added 9/15/04)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal Services, Justice and Public Safety Cabinet, Department of Corrections, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REES, Commissioner
APPROVED BY AGENCY: June 3, 2005
FILED WITH LRC: June 3, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 5 working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 564-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Department of Corrections including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and (8) to meet ACA requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to corrections employees as to their duties, rights, and responsibilities.

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

(a) How the amendment will change this existing administrative regulation: The amendments shall bring corrections in compliance with ACA Standards; show compliance with current practices; and, show actual practice of the penal institutions.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 197.025(6).

(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: This will assist in informing staff on the effective and orderly management of the penal institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections 3,650 employees and 17,609 inmates, and all visitors to state.
correctional institutions.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: None
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial: None
(b) On a continuing basis: None
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change. If it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING. Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 195 035, 197.020, 439.470, 439 590, 439.640

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

Section 1. Incorporation by Reference, (1) "Department of Corrections Secured Policies and Procedures, June 14, 2005 (March 8, 2005)" are incorporated by reference. Secured Policies and Procedures Include:
BCC 08-04-02 Immediate Release of Inmates from Locked Areas (Amended 1/12/05)
BCC 09-04-01 Construction Crew Entry, Exit and Regulations (Amended 1/12/05)
BCC 09-04-02 Complex Entry and Exit (Amended 1/12/05)
BCC 09-05-01 Key Control (Amended 1/12/05)
BCC 09-06-02 Transportation to Courts (Amended 1/12/05)
BCC 09-07-01 Drug Abuse and Intoxicants Testing (Amended 1/12/05)
BCC 09-08-01 Weapons and Related Security Device Control (Amended 1/12/05)
BCC 09-08-02 Use of Restraints (Amended 1/12/05)
BCC 09-17-01 Institutional Supervisor Inspections (Amended 1/12/05)
BCC 09-20-01 Inmate Death (Amended 1/12/05)
BCC 09-21-01 Tool Control (Amended 1/12/05)
BCC 09-22-01 Emergency Power and Communication System
BCFC 08-01-01 Bell County Forestry Camp's Institutional Emergency Plan
BCFC 08-09-02 DSHA Hazard Communication Program
BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team
BCFC 09-07-01 Key Control
BCFC 09-11-01 Guidelines for Contractors
BCFC 09-15-01 Post One and Sallyport Post Four (Amended 1/12/05)
VOLUME 32, NUMBER 1 – JULY 1, 2005

KSP 08-02-05 Storage of Flammables and Dangerous Chemicals and Their Use (Amended 1/12/05)
KSP 08-03-01 Emergency Plans and General Policy (Amended 1/12/05)
KSP 08-03-02 General Procedures and Plans for Riots and Dis disturbances (Amended 1/12/05)
KSP 08-03-03 Master Riot Control Plan (Amended 1/12/05)
KSP 08-03-04 Hostage Plans (Amended 1/12/05)
KSP 08-03-05 Work Slowdown, Work Stoppage, Work Strikes, by Correctional Employees (Amended 1/12/05)
KSP 08-03-06 Escape Procedure (Amended 1/12/05)
KSP 08-03-08 Bomb Plans (Amended 1/12/05)
KSP 08-05-01 Corrections Emergency Response Team (Amended 1/12/05)
KSP 09-01-01 Use of Force (Amended 1/12/05)
KSP 09-07-01 Weapons Control (Amended 1/12/05)
KSP 09-08-01 Searches and Preservation of Evidence (Amended 1/12/05)
KSP 09-09-01 Transportation of Inmates (Amended 1/12/05)
KSP 09-10-01 Institutional Security Inspections (Amended 1/12/05)
KSP 09-10-02 Security Inspection Guidelines for Cellhouse Officers (Amended 1/12/05)
KSP 09-11-01 Tool Control (Amended 1/12/05)
KSP 09-12-01 Key Control (Amended 1/12/05)
KSP 09-13-05 Outside Hospital Duty, Inpatient and Outpatient Care for Inmates (Amended 1/12/05)
KSP 09-14-01 Count Procedures (Amended 1/12/05)
KSP 09-15-01 Entry and Exit Procedures (Amended 1/12/05)
KSP 09-15-04 Institutional Limited Access (Amended 1/12/05)
KSR 08-01-01 Control of Flammable, Hazardous, Toxic and Caustic Chemicals and Materials (Amended 6/14/05)
KSR 08-01-02 Corrections Emergency Response Team (Amended 6/14/05)
KSR 08-01-03 Emergency Medical Transportation (Amended 6/14/05)
KSR 08-01-04 Escape Response Procedure
KSR 09-00-04 Box 1 Entry and Exit Procedure (Amended 6/14/05)
KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy (Amended 6/14/05)
KSR 09-00-27 Construction Crew Entry and Exit (Amended 6/14/05)
KSR 09-01-01 Count Procedures (Amended 6/14/05)
KSR 09-01-02 Gate 1 Entrance and Exit Procedure (Amended 6/14/05)
KSR 09-01-03 Tunnel Gate Entrance and Exit Procedure
KSR 09-01-04 Outside Stockade Gate (Box 01)
KSR 09-01-05 Tool Control
KSR 09-01-06 Security Inspection Plan
KSR 09-01-07 Key Control
KSR 09-01-08 Issuance of Firearms and Chemical Weapons From Arms Vault
KSR 09-01-09 Officers Daily Housing Security and Safety Log, Security Index, Correctional Security Guide and Post Orders
KSR 09-01-10 Issuance of Institutional Portable Radios
KSR 09-01-11 Transportation of Inmates
KSR 09-01-12 Collection, Preservation and Identification of Physical Evidence
KSR 09-01-13 Forced Cell Move in Medium or Maximum Area
KSR 10-01-11 Special Management – Behavior Problem Control
LLCC 08-03-01 Emergency Squad: Selection, Training and Evaluation (Amended 3/8/05)
LLCC 09-01-02 Priority Posts and Emergency Security Posts Assignments for Daily Operation (Amended 3/8/05)
LLCC 09-06-01 Central Control Center Operating Procedure (Entry Into Institutional Compound) (Amended 6/14/05 [3/8/06])
LLCC 09-07-01 Count Procedure and Documentation (Amended 6/14/05 [4/2/06])
LLCC 09-08-01 Regulation of Inmate Movement (Amended 3/8/05)
LLCC 09-08-02 Unit Security and Emergency Procedure (Amended 3/8/05)
LLCC 09-09-01 Transportation of Inmates - Entry and Exit Procedures (Amended 3/8/05)
LLCC 09-09-02 Entry and Exit Control (Amended 3/8/05)
LLCC 09-11-01 Standards for Maintaining Perimeter Security (Amended 6/14/05 [4/2/06])
LLCC 09-11-04 Outside Detail (Amended 1/12/05)
LLCC 09-12-02 Monitoring Staff and Visitors Movement (Amended 3/8/05)
LLCC 09-13-01 Outside Hospitals (Amended 1/12/05)
LLCC 09-14-01 Security Procedures for Print Shop (Amended 1/12/05)
LLCC 09-15-01 Emergency Redlight Response (Amended 3/8/05)
LLCC 09-17-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power (Amended 3/8/05)
LLCC 09-18-04 Monitoring of Inmate Telephone Calls (Amended 1/12/05)
LLCC 09-20-01 Weapons and Related Security Device Control (Amended 3/8/05)
LLCC 09-20-02 Key Control (Amended 3/8/05)
LLCC 09-20-03 Tool and Equipment Control (Amended 3/8/05)
LLCC 09-21-03 Cell Entry in a Dorm or Special Management Unit (Amended 1/12/05)
LLCC 09-22-01 Application of Restraints (Amended 3/8/05)
LLCC 09-24-01 Weekly Inspection and Maintenance of All Security Devices (Amended 1/12/05)
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use (Amended 1/12/05)
NTC 09-01-02 Escape By Air
NTC 09-02-01 Regulation of Inmate Movement
NTC 09-04-01 Construction and Service Personnel (Amended 1/12/05)
NTC 09-05-01 Count Procedure and Documentation (Amended 1/12/05)
NTC 09-08-01 Issuance and Use of Institution Portable Radios (Amended 1/12/05)
NTC 09-08-01 Transportation of Inmates (Amended 1/12/05)
NTC 09-10-01 Use of Force; Prohibiting Personal Abuse and Corporal Punishment
NTC 09-10-02 Use of Physical Restraints (Amended 1/12/05)
NTC 09-11-01 Tool Control
NTC 09-13-01 Procedure for Operation in the event of Dense Fog and Loss of Power
NTC 09-17-01 Maintaining Perimeter Security (Amended 1/12/05)
NTC 09-17-02 Perimeter Security Check
NTC 09-18-01 Key Control (Amended 1/12/05)
NTC 09-19-01 Electrical Disabling Devices (Amended 1/12/05)
NTC 09-20-01 Security Inspection Plan
NTC 09-21-01 Inclement weather Operations
NTC 09-25-01 Weapons and Related Security Device Control (Amended 1/12/05)
NTC 09-25-02 Use of Chemical Agents (Amended 1/12/05)
NTC 09-28-01 Personal Firearms Owned by Employees Residing on Institutional Property
NTC 09-30-01 Security Check-In List Procedures (Added 1/12/05)
RCC 08-03-01 Escape Procedures (Amended 1/12/05)
RCC 08-03-01 Control and Use of Flammable, Toxic, and Caustic Materials (Amended 1/12/05)
RCC 08-09-01 Institutional Emergency Plan (Amended 1/12/05)
RCC 09-01-01 Establishment of Security Posts (Amended 1/12/05)
RCC 09-01-02 Mandatory Security Post Coverage (Amended 1/12/05)
RCC 09-02-01 Security Activity Logs (Amended 1/12/05)
RCC 09-03-01 Institutional Security Inspections (Amended 1/12/05)
RCC 09-04-03 Duties and Responsibilities of the Fire and Safety Officer
RCC 09-05-01 Entry and Exit to Institution (Amended 1/12/05)
RCC 09-06-01 Search Policy/Disposition of Contraband (Amended 1/12/05)
RCC 09-06-02 Collection, Preservation, and Identification of Physical Evidence (Amended 1/12/05)
RCC 09-06-04 Disposition of Contraband from Outside Institutional Perimeter (Amended 1/12/05)
RCC 09-07-01 Key Control (Amended 1/12/05)
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker, Staff Attorney (502-564-2024)
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the secured policies and procedures governing the Department of Corrections including the rights and responsibilities of employees and the inmate population.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, 197.025(6) and to meet ACA requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Department of Corrections through secured procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise direction and information to corrections employees as to their duties, rights, and responsibilities.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment modifies the corrections in compliance with ACA Standards, show compliance with current practices, and show actual practice of the penal institutions
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196 035, 197.020, and 197.025(6).
(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his authorized representative to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections.
(d) How the amendment will assist in the effective administration of the statutes: This will assist in informing staff on the effective and orderly management of the penal institutions.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, 3,600 employees and 17,609 inmates, and all visitors to state correctional institutions.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: None
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? No. Tiering was not appropriate in the 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.

Education Cabinet
Board of Education
Department of Education
(Amendment)

702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training.

RELATES TO. KRS 156.160, 189.540, 49 C.F.R. 382.101-
VOLUME 32, NUMBER 1 – JULY 1, 2005

382.605

STATUTORY AUTHORITY: KRS 156.160, 189.540
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to perform inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the state board to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications and responsibilities of the school bus driver.

Section 1. (1) A local board of education shall require annual medical examination of each school bus driver or driver of a special vehicle used to transport school children to and from school and events related to the school. A district may require a school bus driver to pass a routine medical examination or a special type medical examination more often than annually at the district’s expense. A current medical examination certificate (TC 94-35 and the Supplement to TC 94-35) for each school bus driver shall be retained by the district.

(2) The medical examination shall include tests for:
(a) Hearing and vision disorders;
(b) Emotional instability; and
(c) Severe medical conditions including:
1. Diabetes;
2. Epilepsy;
3. Heart disease, and
4. Other chronic or communicable diseases if indicated in the opinion of the licensed medical examiner.

(3) The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations.

(4) A medical examination of a school bus driver shall be reported on Form TC 94-35 and the Supplement to TC 94-35 to the local superintendent or his designate.

Section 2. (1)(a) A criminal records and driving history check shall be performed by a local district on school bus drivers prior to initial employment and after a break in service (excluding summers).

(b) Employment shall be contingent upon meeting the requirements of paragraph (a) of this subsection. A local board of education shall adopt policies outlining employment qualifications related to these criminal records and driving history checks.

(c) A school bus driver shall immediately report to the local superintendent or his designee:
1. Revocation of his driver’s license;
2. Conviction for DUI/DWI;
3. Conviction for reckless driving; or
4. Citation for any moving motor vehicle violation including DUI/DWI and reckless driving.

(2)(a) Controlled substance and alcohol use testing shall be a condition of employment for anyone in a safety sensitive position, including:
1. School bus drivers;
2. School bus mechanics; and
3. Other safety-sensitive jobs requiring a CDL license.

(b) The controlled substance and alcohol use testing program shall include the following tests:
1. Preemployment testing (controlled substance only);
2. Postaccident testing;
3. Random testing; and
4. Reasonable suspicion testing.

(c) Prospective employees who have tested positive for a controlled substance within the last five (5) years shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to pupil transportation.

(d) A school bus driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties having a confirmed positive test for a controlled substance shall be relieved of those duties immediately and not be eligible for reemployment for five (5) years.

(e) A school bus driver, school bus mechanic or anyone performing safety-sensitive pupil transportation duties who tests at 0.02 percent or higher on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately and not be eligible for reemployment in a safety-sensitive position for five (5) years.

(f) A person shall not be employed as a school bus driver if convicted within the past five (5) years of driving a motor vehicle under the influence of alcohol or any illegal drug.

(g) A person shall not drive a school bus unless the person is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other body parts, due to injury or disease that would limit the driver’s ability to safely perform the task of driving a school bus or performing other driver responsibilities, the person shall not be employed as a school bus driver.

(h) A driver taking medication either by prescription or without prescription shall report to the immediate supervisor and shall not drive if that medication would affect the driver’s ability to safely drive a school bus or perform other driver responsibilities.

Section 3. (1) A person shall not drive a school bus unless the person has:
(a) Visual acuity of at least 20/40 (Snellen) in each eye either without corrective lenses or by correction with corrective lenses;
(b) Form field vision of not less than a total of 140 degrees; and
(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) A driver requiring correction by corrective lenses shall wear properly prescribed corrective lenses at all times while driving.

Section 4. A person shall not drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. A driver requiring a hearing aid shall wear properly operating aids at all times while driving.

Section 5. A school bus driver shall be at least twenty-one (21) years of age.

Section 6. (1) A school bus driver shall have a current driver’s license that is valid in Kentucky. A school bus driver shall possess a commercial driver’s license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2)(a) Prior to acceptance into the school bus driver training program, a driver applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in "Preemployment Road Test", January, 2002.

(b) The Preemployment Road Test Score Sheet supplied by the Department of Education shall become a part of the driver’s training record.

(c) A driver shall demonstrate the following skill levels:
1. Vehicle knowledge; and
2. Driver ability to perform steering, maneuvering, braking, use mirrors, and demonstrate each of the following:
   a. Ninety (90) degree left hand turns steering technique;
   b. Ninety (90) degree right hand turns steering technique;
   c. Operating posture;
   d. Visual awareness;
   e. Backing ability using mirrors only; and
   f. Demonstration of spatial awareness.

Section 7. (1) Minimum training requirements to become a school bus driver shall consist of the training course developed by the Kentucky Department of Education and three (3) driver review, evaluation and instruction components.

(2)(a) A person shall not be certified to teach the school bus driver training curriculum until that person has:
1. Satisfactorily completed a minimum of thirty-three (33) hours classroom and driving instruction, conducted or approved by the Department of Education and relevant to the driver training curriculum; and
2. Been issued an instructor's certificate by the commissioner of education.

(3) Instructors shall be required to renew their certificates annually by completing six (6) hours of update training conducted or approved by the department.

(4) The training course core curriculum shall consist of the following instructional units and minimum instructional times:

  (a) Laws and regulations - two (2) hours;
  (b) Driving fundamentals - two (2) hours;
  (c) Care and maintenance - two (2) hours;
  (d) Critical situations - one (1) hour;
  (e) Incidents and emergency procedures - two (2) hours;
  (f) Pupil management - two (2) hours;
  (g) First aid - one (1) hour;
  (h) Special education transportation - one (1) hour;
  (i) Extracurricular trips - one (1) hour;
  (j) Vehicle operations - three (3) hours;
  (k) Vehicle control at speed - one (1) hour; and
  (l) Bus route identification, driver review and instruction - two (2) hours.

(5) Upon successful completion of the core curriculum the school bus driver applicant shall complete the following:

  (a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving;
  (b) Driver review II, evaluation and instruction - two (2) hours after not less than twenty (20) days nor more than thirty (30) days of driving; and
  (c) Driver review III evaluation and instruction - one (1) hour within three (3) to six (6) months of completion of driver review II.

Driver review III shall be done with students on the bus.

Section 8. (1) Prior to the beginning of each school year, a certified driver shall complete an eight (8) hour training update relevant to the curriculum prior to the beginning of the school year. Each district shall be responsible for planning and conducting the update based on the needs of its drivers.

(2) Discontinuance of driver employment and subsequent reemployment shall require the driver to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) A driver who does not complete the training update and recertification as required by subsection (2) of this section shall be required to complete the beginning training program.

Section 9. If an emergency makes it necessary for the driver to leave the bus while pupils are on board, the driver shall:

  (1) Move the bus to a safe location if possible;
  (2) Stop the engine;
  (3) Shift the bus to low gear, or place in neutral if automatic equipped;
  (4) Set the parking brake;
  (5) Remove the ignition key; and
  (6) Place one (1) of the older responsible pupils in charge during the driver's absence if appropriate

Section 10. A driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 11. (1) A driver shall supervise the seating of the pupils on the bus. A driver may assign a pupil to a specific seat on the bus.

(2) The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle. A driver shall not permit pupils to stand:

  (a) In the stepwell or landing area;
  (b) If the pupil would likely fall out of the bus if the emergency door were opened; or
  (c) If the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

(3) A driver shall report to the superintendent or a designee any overcrowded conditions on the bus.

Section 12. (1) A driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or a designee.

(2) A driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or a designee.

Section 13. A driver shall not transport adult employees of the board or any person not employed by the board of education unless provided with written permission from the district superintendent or a designee.

Section 14. A board of education shall develop a policy on what may or may not be transported on a school bus. The policy shall include the following:

(1) A driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported on the bus; and

(2) A driver shall not permit to be transported on the bus:

  (a) Any live animals, except for an animal that is to enable a person to safely utilize the bus transportation as documented by adequate medical evidence or a student's Individual Education Plan, and that is not a risk to other bus riders [row, or reprieve];

  (b) Preserved specimen that would likely frighten any pupil or cause a commotion on the bus; or

  (c) Glass objects or helium balloons.

(3) A driver shall not permit the transportation of any object that would block the bus aisle or exits.

Section 15. A driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 16. (1) A driver shall activate the flashing amber signal lights at least 150 feet, if available, or a sufficient distance from a bus stop to warn motorists of the intended stop.

(2) Once the bus comes to a complete stop, the driver shall follow the loading and unloading procedure outlined in Chapter 5 of the Driver Training Instructors Manual.

Section 17. For safety reasons, a driver shall not permit fueling of the bus while pupils are on board the bus.

Section 18. (1) If a pupil's conduct on the bus makes it unsafe for the bus to continue on its route, the driver shall:

  (a) Make a determination as to the potential danger to other students on the bus; and

  (b) Take action against the student by:

    1. Requesting that the student stop engaging in the prohibited conduct;

    2. If feasible, sending for assistance if the student fails to comply with the driver's order or request;

    3. Ordering the student to leave the bus;

    4. Ejecting the pupil from the bus.

(2) Ejecting a pupil from the bus shall be done only in the most extreme circumstances.

(3) If a student has been ejected from a bus as the result of conduct specified in subsection (1) of this section, the driver shall notify the immediate supervisor who shall notify the appropriate district authorities, who shall subsequently notify the student's parent or legal guardian according to local board policy.

Section 19. A school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track.

(1) After making the stop, the driver shall:

  (a) Set the parking brake;

  (b) Shift to neutral;

  (c) Activate the noise abatement switch;

  (d) Open the service door and driver side window; and

  (e) Carefully look in each direction and listen for approaching
VOLUME 32, NUMBER 1 – JULY 1, 2005

trains before proceeding
(2) If visibility is impaired at a crossing, after stopping the driver may allow the vehicle to roll forward to gain required visibility before proceeding.
(3) When a driver has ascertained that it is safe for the bus to cross the railroad tracks, the driver shall:
(a) Close the bus entrance door;
(b) Shift the bus gears into the range that will provide adequate power;
(c) Release the parking brake;
(d) Proceed immediately to cross the railroad tracks; and
(e) Turn the noise abatement switch off when safe to do so.

Section 20. A driver shall make a pretrip inspection of the bus safely and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 21. (1) A school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels.
(2) A driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 22. A driver shall wear the driver's seat belt at all times that the bus is operated.

Section 23. A stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 24. A driver shall not use tobacco products on the school bus and shall not permit pupils to use tobacco products on the school bus.

Section 25 A driver shall signal pupils to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 26. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this administrative regulation. A driver found under the influence of alcohol or any illegal drug while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

Section 27. A driver of a school bus shall be on the bus at all times students are loading or unloading

Section 28. A driver shall inspect the school bus at the completion of each bus run to ensure that no students remain on the bus.

Section 29. Incorporation by Reference. (1) The following material is incorporated by reference.
(a) Forms TC 84-35, July, 1990, and Supplement to TC 94-35, July, 1990, Division of Pupil Transportation, Department of Education;
(b) "Preemployment Road Test", January 2002, Division of Pupil Transportation, Department of Education;
(c) "Driver Trainer Instructors Manual", July 9, 1995; and
(d) "Preemployment Road Test Score Sheet", January 2002.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 14, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 22, 2005, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-3921.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kyna Koch
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 159.160 and 189.040 require the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement those duties relative to the qualification and responsibility of the school bus drivers.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation requires school bus drivers to meet certain qualifications and responsibilities in transporting public school children.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out specific responsibilities for school bus drivers.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation. The amendment will allow service animals to ride the bus. The animal is not at risk to the driver and adequate medical evidence or the student's individual education plan documents the need for such assistance.
(b) The necessity of the amendment to this administrative regulation: Recently some districts have requested a waiver from Section 14 of this regulation which prohibits live animals from being transported on a bus. The Kentucky Board of Education granted the waivers so that assistance or service animals may be transported.
(c) How the amendment conforms to the content of the authorizing statute: This amendment does not affect the conformity of the administrative regulation to statute.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide updated guidelines for school transportation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
All local school districts.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will have no effect on local school districts since districts with children requiring transportation services animals routinely ask the Kentucky Board of Education for a waiver of the regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
-130-
which describes school success on the academic goals one (1),
two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).
(9) "Accountability index" means the statistic defined in KRS
158.6457(1).
(10) "Accountability level" means elementary (grades end of
primary, four (4), and five (5)), middle (grades six (6), seven
(7), and eight (8)), or high school (grades nine (9), ten (10),
eleven (11), and twelve (12)).
(11) "Adequate yearly progress in both reading and mathe-
matics" means required performance of each school or district in
obtaining:
(a) Annual measurable objectives in reading and mathematics
in the total school or district and each subpopulation of sufficient
size identified in 20 U.S.C. 6301 et seq.;
(b) A school classification of any category of Progressing or
meets goal in the CATS biennial or midpoint classification, which-
ever occurred more recently, [prior-year accountability index] at
the elementary and middle school levels; or for a school in the assis-
tance category which demonstrates growth in the accountability
index at or above the state average for the specific grade-level
configuration [that is eighty (80) or higher, equal to or greater than
the corresponding biennial goal, or greater when compared to the
accountability index from the year before].
(c) A prior year graduation rate at the high school level that
exceeds that of the year before or meeting the annual goal estab-
lished by the Kentucky Board of Education for graduation rate as
follows:

<table>
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<th>YEAR</th>
<th>GRADUATION RATE</th>
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</tr>
<tr>
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</tr>
</tbody>
</table>

(d) The required ninety-five (95) percent participation rate in
the total school or district and each subpopulation of sufficient size
identified in 20 U.S.C. 6301 et seq.
(12) "Adequate yearly progress in mathematics" means re-
quired performance of each school or district in obtaining:
(a) Annual measurable objectives in mathematics in the total
school or district and each subpopulation of sufficient size identi-
fied in 20 U.S.C. 6301 et seq.;
(b) A school classification of any category of progressing or
meets goal in the CATS biennial or midpoint classification, which-
ever occurred more recently, [prior-year accountability index] at
the elementary and middle school levels; or for a school in the assis-
tance category which demonstrates growth in the accountability
index at or above the state average for the specific grade-level
configuration [that is eighty (80) or higher, equal to or greater than
the corresponding biennial goal, or greater when compared to the
accountability index from the year before].
(c) A prior year graduation rate at the high school level that
exceeds that of the year before or meeting the annual goal estab-
lished by the Kentucky Board of Education for graduation rate as
follows:
(d) The required ninety-five (95) percent participation rate in
the total school or district and each subpopulation of sufficient size
identified in 20 U.S.C. 6301 et seq.
(13) "Adequate yearly progress in reading" means required
performance of each school or district in obtaining:
(a) Annual measurable objectives in reading in the total
school or district and each subpopulation of sufficient size identified in 20
U.S.C. 6301 et seq.;
(b) A prior year accountability index at the elementary and
middle school levels that is eighty (80) or higher, equal to or

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)

703 KAR 5:001. Assessment and accountability defini-
tions.

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

STATUTORY AUTHORITY: KRS 156 029, 156 070, 158.6453,
158 6455

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

Section 1. Definitions. (1) "A1 school" means a school under
administrative control of a principal or head teacher and eligible to
establish a school-based decision-making council. An A1 school is
not a program operated by, or as a part of, another school.
(2) "A2 program" means a district-operated, totally vocational-
technical program, where the membership is counted in other
schools.
(3) "A3 program" means a district-operated, totally special
education program.
(4) "A4 program" means a district-operated, totally preschool
program (e.g., Headstart, Kentucky Education Reform Act (KERA)
Preschool, or Parent And Child Education (PACE)).
(5) "A5 program" means an alternative program which is a
district-operated and district-controlled facility with no definable
attendance boundaries that is designed to provide services to at-
tract populations with unique needs. Its population composition and
characteristics change frequently and are controlled by the local
school district student assignment practices and policies (i.e., the
local district personnel have input with regard to the identification
of students receiving services provided by the A5 school as opposed
to unconditionally accepting court ordered placements). Students
enrolled in A5 program typically include:
(a) Actual dropouts returning to an alternate educational
environment;
(b) Potential or probable dropouts;
(c) Drug abusers;
(d) Physically abused students;
(e) Discipline problem students;
(f) Nontraditional students (e.g., students who have to work
during the school day); or
(g) Students needing treatment (e.g., emotional/psychological).
(6) "A6 program" means a district-operated instructional pro-
gram in a nondistrict-operated institution or school.
(7) "A2-A6 program" means a program which is classified as
A2, A3, A4, A5, or A6.
(8) "Academic index" means the summary statistic or index
that describes school success on the academic goals one (1),
two (2), five (5), and six (6) set forth in KRS 158.6451(1)(b).
(9) "Accountability index" means the statistic defined in KRS
158.6457(1).
(10) "Accountability level" means elementary (grades end of
primary, four (4), and five (5)), middle (grades six (6), seven (7),
and eight (8)), or high school (grades nine (9), ten (10), eleven
(11), and twelve (12)).
(11) "Adequate yearly progress in both reading and mathe-
matics" means required performance of each school or district in
obtaining:
(a) Annual measurable objectives in reading and mathematics
in the total school or district and each subpopulation of sufficient
size identified in 20 U.S.C. 6301 et seq.;
(b) A school classification of any category of Progressing or
meets goal in the CATS biennial or midpoint classification, which-
ever occurred more recently, [prior-year accountability index] at
the elementary and middle school levels; or for a school in the assis-
tance category which demonstrates growth in the accountability
index at or above the state average for the specific grade-level
configuration [that is eighty (80) or higher, equal to or greater than
the corresponding biennial goal, or greater when compared to the
accountability index from the year before].
(c) A prior year graduation rate at the high school level that
exceeds that of the year before or meeting the annual goal estab-
lished by the Kentucky Board of Education for graduation rate as
follows:
(d) The required ninety-five (95) percent participation rate in
the total school or district and each subpopulation of sufficient size
identified in 20 U.S.C. 6301 et seq.
(12) "Adequate yearly progress in mathematics" means re-
quired performance of each school or district in obtaining:
(a) Annual measurable objectives in mathematics in the total
school or district and each subpopulation of sufficient size identi-
fied in 20 U.S.C. 6301 et seq.;
(b) A school classification of any category of progressing or
meets goal in the CATS biennial or midpoint classification, which-
ever occurred more recently, [prior-year accountability index] at
the elementary and middle school levels; or for a school in the assis-
tance category which demonstrates growth in the accountability
index at or above the state average for the specific grade-level
configuration [that is eighty (80) or higher, equal to or greater than
the corresponding biennial goal, or greater when compared to the
accountability index from the year before].
(c) A prior year graduation rate at the high school level that
exceeds that of the year before or meeting the annual goal estab-
lished by the Kentucky Board of Education for graduation rate as
follows:
(d) The required ninety-five (95) percent participation rate in
the total school or district and each subpopulation of sufficient size
identified in 20 U.S.C. 6301 et seq.
(13) "Adequate yearly progress in reading" means required
performance of each school or district in obtaining:
(a) Annual measurable objectives in reading in the total
school or district and each subpopulation of sufficient size identified in 20
U.S.C. 6301 et seq.;
(b) A prior year accountability index at the elementary and
middle school levels that is eighty (80) or higher, equal to or

greater than the corresponding biennial goal, or greater when compared to the accountability index from the year before;
(e) A prior year graduation rate at the high school level that exceeds that of the year before or meeting the annual goal established by the Kentucky Board of Education for graduation rate as listed in Section 1(11)(c) of this administrative regulation; and
(d) The required ninety-five (95) percent participation rate in the total school or district and each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

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

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

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

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

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

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

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

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

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

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

(24) "Goal line" means a fixed line that extends from a point that is one (1) standard error of measurement below school's baseline index to a point that is one (1) standard error of measurement below the state goal established for the target biennium.

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

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

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

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

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

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

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

(32) "Meets goal" means a school with a growth accountability index that meets or exceeds its goal point and the school meets the dropout and novice reduction requirements of 703 KAR 5:020, Section 6.

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

(34) "Nonacademic index" means the statistic which describes school success on the nonacademic goals set forth in KRS 150.6451(1)(a), (f), and (o).

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

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

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

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

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

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

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

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

(43) "School portfolio" means a collection of documents pertinent to a school that is used to create a profile of the strengths and limitations of the school's instructional and organizational effectiveness, including:
(a) The comprehensive school improvement plan;
(b) State assessment results;
(c) Federal accountability results; (d) Student achievement data; (e) Portfolio writing analysis data; (f) School survey data; (g) The school report card; (h) District technology inventory; (i) School handbook and master schedule; (j) School-based decision-making policies and meeting minutes; (k) Teacher lesson plans; (l) District evaluation plan; (m) Curriculum alignment documents; (n) Examples of student work; and (o) A listing of professional development activities.

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

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

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

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

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

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

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

(51) "Student with limited English proficiency" means an individual who is an English language learner who has sufficient difficulty speaking, reading, writing, or understanding the English language and whose difficulties may deny the individual opportunity to meet the state's proficient level of achievement on state assessments and to successfully achieve in classrooms where the language of instruction is English or to participate fully in society. A "student with limited English proficiency" also means a student who is age three (3) to twenty-one (21), is enrolled or preparing to enroll in an elementary school or secondary school and (a) Was not born in the United States or, whose native language is a language other than English; (b) Comes from an environment in which a language other than English has had a significant impact on the individual's level of English language proficiency; (c) Is Native American, Alaska Native, or native resident of the outlying areas who comes from an environment in which a language other than English has had a significant impact on the student's level of English language proficiency; or (d) Is migratory, whose native language is a language other than English, and comes from an environment in which a language other than English is dominant.

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

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

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

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

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

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

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 14, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 22, 2005, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for Kentucky's Assessment and Accountability Program.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6453, 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides definitions for Kentucky's assessment and accountability program as required by KRS 158.6453, 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides common definitions for implementation of regulations included in 703 KAR Chapter 5 which will be applied in all schools and districts.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides specifics on how Kentucky will become compliant with the assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., and implements flexibility recently offered by the U.S. Department of Education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of schools in becoming compliant with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How the amendment conforms to the content of the
authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the assessment and accountability programs.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to schools specifics for the implementation of the requirements of the statewide assessment and accountability programs.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. Local school district staff will be provided common definitions for terms needed in the implementation of the state-required assessment and accountability programs.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional cost to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to implement this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.
(9) TIERING being applied? TIERING was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local school districts.

EDUCATION CABINET
Kentucky Board of Education
Department of Education (Amendment)

703 KAR 5:020. The formula for determining school accountability.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 158.6457, 20 U.S.C. 6301 et seq.
STATUTORY AUTHORITY: KRS 156.029, 158.070, 158 6453, 158.6455

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

Section 1. Assessments. (1) The Kentucky Department of Education shall administer the Kentucky Core Content Tests and norm-referenced tests. The Kentucky Core Content Tests shall be administered as follows:
(a) Reading at grades 4, 7, and 10;
(b) Mathematics at grades 5, 8, and 11;
(c) Science at grades 4, 7, and 11;
(d) Social studies at grades 5, 8, and 11;
(e) Arts and humanities at grades 5, 8, and 11;
(f) Practical living/vocational studies at grades 5, 8, and 10;
(g) Writing at grades 4, 7, and 12;
(h) Writing portfolio at grades 4, 7, and 12; and

(i) Alternate portfolio at 4, 8, and the last anticipated year of attendance at the high school level.
(2) The norm-referenced tests shall be administered in reading/language arts and mathematics at the end of primary, grade 6, and grade 9.
(3) In order to comply with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., the Kentucky Department of Education shall augment the norm-referenced test to appropriately measure Kentucky's core content in reading and mathematics at grades three (3) and six (6). At grades five (5) and eight (8) an additional augmented norm-referenced test shall be administered in reading, and at grades four (4) and seven (7) an additional augmented norm-referenced test shall be administered in mathematics.
(4) Required participation in the National Assessment of Educational Progress. If a school is selected by the U.S. Department of Education or its designated contractors to participate in the state National Assessment of Educational Progress in reading, mathematics, and science at grades four (4) and eight (8), the school shall participate fully.

Section 2. Academic and Nonacademic Index Calculations (1) For purposes of calculating a school's academic indices, the school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades. The points assigned to students scoring at each student achievement level and sublevel for purposes of computing the academic indices for a particular content area shall include:
(a) Nonperformance - if a total open-response raw score of less than one (1), and multiple-choice total raw score that is less than chance performance and the score converts to less than medium novice, it shall be assigned a score of zero. For the writing or alternate portfolio, a blank or incomplete response shall be assigned a score of zero;
(b) Medium novice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of thirteen (13);
(c) High novice (reading, mathematics, science, and social studies) shall be assigned a score of twenty-six (26);
(d) Low apprentice (reading, mathematics, science, and social studies) shall be assigned a score of forty (40);
(e) Medium apprentice (reading, mathematics, science, social studies, alternate portfolio, writing on-demand prompt, writing portfolio, arts and humanities, practical living and vocational studies) shall be assigned a score of sixty (60);
(f) High apprentice (reading, mathematics, science, and social studies) shall be assigned a score of eighty (80);
(g) Proficient in all content areas shall be assigned a score of 100, or distinguished in all content areas shall be assigned a score of 140.
(2) For all content areas except writing, the scores derived from the Kentucky Core Content Test shall be based on a scoring method that assigns sixty-seven (67) percent of the weight of the scores from open-response items and thirty-three (33) percent of the weight from multiple-choice items. The writing score shall be based on the writing prompt and the writing portfolio.
(3) The values for attendance rate and successful transition to adult life rate shall be the actual percentage reported. The values entered into formula calculations for retention rate and dropout rate shall be 100 minus the actual percentage calculated. Nonacademic data for a particular assessment year shall be calculated using the data from the previous school year. Nonacademic data shall be based on all grades within a school building generating appropriate data as follows:
(a) Attendance, primary through grade twelve (12);
(b) Retention rates, grades four (4) through twelve (12);
(c) Dropout rates, grades seven (7) through twelve (12); and
(d) Successful transition to adult life for the graduating students.
(4) Scores from alternate portfolios shall be included in the academic indices so that the data from an alternate portfolio com-
pleated by a student eligible to participate with an alternate portfolio contributes the same weight to the academic component of the accountability index as would the data for a student participating in the regular components of the assessment program at the elementary, middle, or high school levels. The same requirement shall be applied to calculations required by "No Child Left Behind Act of 2001" 20 U.S.C. 6301 et seq.

Section 3. Components of the Accountability Index and Weights. (1) The accountability index shall consist of two (2) components. Component one (1) consists of academic indices and the nonacademic index. Component two (2) shall be an index created from a national norm-reference test (NRT). Component one (1) shall comprise ninety-five (95) percent of the total index. Component two (2) shall comprise five (5) percent of the index.

(2) The accountability index shall be rounded to the nearest tenth on the accountability scale.

(3) Computing the academic index for each of the content areas of writing, reading, mathematics, science, social studies, arts and humanities, and practical living and vocational studies shall be based on the average of student scores as described in Section 2(1) of this administrative regulation. Component one (1) of the accountability index shall be calculated according to the following weights:

(a) Elementary school (grades end of primary - grade five 5)

<table>
<thead>
<tr>
<th>Content Area</th>
<th>Component One (Without NRT)</th>
<th>Component One and Two (With NRT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
<td>20%</td>
<td>19.00%</td>
</tr>
<tr>
<td>Mathematics</td>
<td>20%</td>
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<tr>
<td>Science</td>
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</tr>
<tr>
<td>Social studies</td>
<td>15%</td>
<td>14.25%</td>
</tr>
<tr>
<td>Writing On-Demand Prompt</td>
<td>3%</td>
<td>2.85%</td>
</tr>
<tr>
<td>Writing Portfolio</td>
<td>12%</td>
<td>11.40%</td>
</tr>
<tr>
<td>Arts and Humanities</td>
<td>5%</td>
<td>4.75%</td>
</tr>
<tr>
<td>Practical Living and</td>
<td>5%</td>
<td>4.75%</td>
</tr>
<tr>
<td>Vocational Studies</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Nonacademic Index (5%)       |                            |                                 |
|------------------------------|----------------------------|                                 |
| Attendance Rate              | 4%                         | 3.80%                           |
| Retention Rate               | 1%                         | 0.95%                           |
| National-Norm-referenced Test| (Not Applicable)            | 5.00%                           |

100% 100.00%

(b) Middle school (grades 6 - 8)

<table>
<thead>
<tr>
<th>Content Area</th>
<th>Component One (Without NRT)</th>
<th>Component One and Two (With NRT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
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</tr>
<tr>
<td>Writing Portfolio</td>
<td>12%</td>
<td>11.40%</td>
</tr>
<tr>
<td>Arts and Humanities</td>
<td>7.5%</td>
<td>7.125%</td>
</tr>
<tr>
<td>Practical Living and</td>
<td>7.5%</td>
<td>7.125%</td>
</tr>
<tr>
<td>Vocational Studies</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Nonacademic Index (10%)      |                            |                                 |
|------------------------------|----------------------------|                                 |
| Attendance Rate              | 4%                         | 3.80%                           |
| Retention Rate               | 4%                         | 3.80%                           |
| Dropout Rate                 | 2%                         | 2.80%                           |
| National-Norm-referenced Test| (Not Applicable)            | 5.00%                           |

100% 100.00%

(c) High school (grades 9 - 12)

<table>
<thead>
<tr>
<th>Content Area</th>
<th>Component One (Without NRT)</th>
<th>Component One and Two (With NRT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reading</td>
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<tr>
<td>Mathematics</td>
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<td>12%</td>
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<td>Arts and Humanities</td>
<td>7.5%</td>
<td>7.125%</td>
</tr>
<tr>
<td>Practical Living and</td>
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<td>7.125%</td>
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<tr>
<td>Vocational Studies</td>
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<td></td>
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</tbody>
</table>

| Nonacademic Index (10%)      |                            |                                 |
|------------------------------|----------------------------|                                 |
| Attendance Rate              | 4%                         | 3.80%                           |
| Retention Rate               | 4%                         | 3.80%                           |
| Dropout Rate                 | 2%                         | 2.80%                           |
| National-Norm-referenced Test| (Not Applicable)            | 5.00%                           |

100% 100.00%

(4) The academic index for each content area and the nonacademic index shall be determined by summing the indices as described in this section.

(5) Component one (1) of the accountability index shall be calculated by aggregating the data from all of the students in the school.

(6) Component two (2) of the accountability index shall be derived from the national norm-referenced assessment as follows:

(a) Student performance standards comparable to those used in component one (1) and described in Section 2 of this administrative regulation shall be established by the end of the year 2000.

(b) Scores shall be associated with each performance level as described in Section 2 of this administrative regulation; and

(c) The component two (2) index shall be based on the average of the scores.

Section 4. Schools Not Conforming to the Standard Grade Configuration. (1) For the Kentucky Core Content Test, if a school does not have grades 4 and 5 at the elementary level, grades seven (7) and eight (8) at the middle school, or grades ten (10), eleven (11), and twelve (12) at the high school, the school shall be combined with the school or schools having the missing grade(s) its students previously attended or would subsequently attend, forming a single school accountability unit, for both state and federal school accountability purposes.

(2) A school that does not contain a grade at which the national norm-referenced test is administered shall have its accountability index calculated using only the weights specified as component one (1) of the index in Section 3 of this administrative regulation. Schools that have more than 1 grade at which the national norm-referenced test is administered shall have those grades combined to form the basis for component two (2) of the calculations described in Section 3 of this administrative regulation.

(3) A school or school district may request a waiver of the requirements of subsections (1) and (2) of this section or from the normal configuration of schools (elementary, middle, or high school) from the Kentucky Board of Education specifying other combinations of schools and assessment data if all students in an accountability grade are included, and all schools are accountable for all content areas assessed. A condition for the granting of a waiver shall be that each affected school and school district shall waive in writing its right to make the school configuration for which it sought a waiver the basis of a subsequent appeal of a school's classification. A waiver request shall be received by the Kentucky Department of Education by June 30 of the year prior to the beginning of the year for which the waiver is requested.

Section 5. Schools Having More than One (1) Accountability
Level. If a school has more than one (1) accountability level, the school's accountability index shall be the average of the academic and nonacademic data for the school. This average accountability index shall be applied toward making adequate yearly progress decisions.

Section 6. School Service Area Reconfigurations. (1) If as a result of a change in service area boundaries or local board of education policies affecting student population served by a school, less than eighty (80) percent of a school's student population at its accountability grades is stable, the school shall be considered a reconfigured school. To determine if eighty (80) percent of the population is stable, the number of students in the stable population shall be divided by the sum of that number, plus the lost population, plus the gained population. If the result is less than eight-tenths (.8), the school shall be considered a reconfigured school.

(2) Schools reconfigured after the 1998-1999 school year shall be assigned a baseline calculated from the 1998-1999 and 1999-2000 aggregate district level data for the appropriate level (elementary, middle, or high school).

(3) A school district shall notify the Department of Education of any school that is planning for the upcoming school year to be [considered] a reconfigured school as provided in this administrative regulation by June 30 prior to the beginning (September 30) of the school year in which the reconfiguration is to occur (become).

(a) For the purpose of assigning a school classification of mental, physical, or in need of assistance, a school that is considered a reconfigured school in either year of a biennium after 2000 on which accountability decisions are based shall have the performance judgment that would have applied to the district at that level (elementary, middle, or high school), if separate decisions (elementary, middle, or high school) were to be applied at the district level. If the school is reconfigured, a school district may submit to the Department of Education a plan for reconstituting baseline data taking into consideration the changes in service areas. The plan shall assure that local district calculations are accurate and appropriately include all student data in both baseline and growth index calculations. The plan shall be submitted to the Department of Education at the same time the district notifies the Department of Education of the school reconfiguration. If the Department of Education approves the plan, it shall become effective and shall remain in effect unless a specific waiver from this reconfiguration arrangement is requested from and granted by the Kentucky Board of Education as provided in this administrative regulation. This alternative shall be implemented the year of the reconfiguration.

(4) A school that has contained more than one (1) level (elementary, middle, or high school) and is reconfigured by removing an entire level of the accountability grades may request that the portion of the school remain within the accountability system using its established historical data.

(5) A school in transition because of a new building or a new policy affecting population served and being phased in may request that the Department of Education establish data to maintain the continuity of accountability data if the request does not require the tracking of individual student data. This request shall require the approval of each affected school council, or the principal, if a school does not have a council, and the local board of education upon the recommendation of the superintendent.

Section 7. Accountability Procedures. (1) To establish expected levels of growth for each school, a straight line shall be drawn from a school's baseline minus one (1) standard error of measurement established in the 1998-1999 and 1999-2000 biennium to the state goal of a growth accountability index of 100 minus one (1) standard error of measurement by 2014.

(2) There shall be five (5) points of school recognition. These shall be determined from the baseline data (school years 1998-1999 and 1999-2000) so that at least ten (10) percent of the schools fall below the first point of recognition and the fifth recognition shall be set at the fifth point of accountability index scale, with the remaining points being established at equal whole number intervals between the high and the low.

Section 8. School Classifications Recognizing Growth. (1) To determine if a school is classified as meets goal, progressing, or in need of assistance, the school's growth accountability index for a biennium shall be compared to the corresponding goal point and assistance point.

(2) A school shall be classified as meets goal if the school's growth accountability index meets or exceeds its goal point and meets the dropout and novice reduction requirements of this section.

(a) To receive rewards under the provisions of this administrative regulation, a school shall have a biennial dropout rate less than or equal to five and three-tenths (5.3) percent, or a dropout rate that is at least one-half (1/2) of one (1) percent lower than its dropout rate of the previous biennium. A school shall not receive rewards if its dropout rate exceeds six (6) percent. If a school is reconfigured for a biennium, the school shall receive the aggregate district dropout rate for that biennium.

(b) To receive rewards under this administrative regulation, a school shall reduce the percent of novices on a schedule so that by the target biennium, the school shall have five (5) percent or less of its students scoring in the novice range of performance. The percent of novices shall be calculated to be reflective of the weights in Section 3 of this administrative regulation. The schedule shall be calculated by subtracting five (5) from the baseline percent novice and dividing this value by seven (7). The maximum allowable percent novice for each biennium shall be calculated as follows:

(a) Year 2002 = baseline percent novice minus the required novice reduction factor;
(b) Year 2004 = baseline percent novice minus the required novice reduction factor multiplied by two (2);
(c) Year 2006 = baseline percent novice minus the required novice reduction factor multiplied by three (3);
(d) Year 2008 = baseline percent novice minus the required novice reduction factor multiplied by four (4);
(e) Year 2010 = baseline percent novice minus the required novice reduction factor multiplied by five (5);
(f) Year 2012 = baseline percent novice minus the required novice reduction factor multiplied by six (6); and
(g) Year 2014 = baseline percent novice minus the required novice reduction factor multiplied by seven (7).

(5) A school shall be classified as a progressing school if the school's growth accountability index falls below its goal point and meets or exceeds its assistance point. A progressing school shall obtain an accountability index greater than that which it obtained in
the previous biennium to earn a reward and other recognition as a progressing school.

(6) A school shall be classified as in need of assistance school if the school’s growth accountability index falls below its assistance point. A school classified as being in need of assistance shall be eligible to apply for Commonwealth school improvement funds and may be subject to a scholastic audit.

(7) In 2002, the highest scoring five (5) percent of all schools shall be designated as Commonwealth pace-setter schools if they have met or exceeded the fourth point of recognition and if they meet the dropout rate and course work reduction requirements of this section. This calculation shall be based on the total accountability index of the school regardless of whether one (1), multiple, or no graduates on which the last reference test is administered are included. If not otherwise receiving rewards in recognition for growth, a Commonwealth pace-setter school shall receive one (1) share of rewards. In addition, to be classified as a pace-setter school beginning with the biennium ending in 2004, a school shall not have declined in both of the two (2) previous biennias. The rewards that may be due a school for having passed a higher point of recognition shall be given in addition to this amount.

Section 9. Reward Amounts. (1) There shall be two (2) levels of rewards for growth. A school classified as meets goal in accordance with Section 8(2) of this administrative regulation shall earn three (3) shares of rewards. A school classified as progressing in accordance with Section 8(3) of this administrative regulation shall earn two (2) shares of rewards.

(2) A special one (1) time reward amount shall be distributed to schools as they meet or exceed school recognition points. These schools shall receive one (1) share of rewards and other forms of recognition as determined by the Kentucky Board of Education for meeting or exceeding each school recognition point.

(3) If a school passes two (2) or more of the school recognition points, in one (1) biennium, the reward shall be cumulative. A school shall be awarded these amounts only one (1) time for meeting or passing each point. A school earning this reward and subsequently falling below a recognition point shall not earn the reward for passing the point again.

(4) A school shall earn a recognition point reward based on where its baseline falls and shall not receive rewards for meeting or exceeding school recognition points below its baseline index.

(5) The total amount of rewards to be distributed to schools and school districts earning rewards shall not exceed one and three-fourths (1 3/4) percent of the amount of funds paid to certified personnel within Kentucky’s public schools during the last year of the accountability cycle. The total number of shares earned shall be divided into the amount determined pursuant to the subsection to determine the reward amount; however, a reward share shall not exceed $2000. A reward share shall be distributed to a school that meets the requirements for rewards as specified in Section 8 of this administrative regulation. The number of shares earned shall be multiplied by the total number of certified staff, as provided in KRS 158.6455 and subsection (6) of this section, to determine the final reward amount, as follows:

   a. Meets goal, number of certified full-time equivalent (FTE) staff times three (3) shares;
   b. Progressing: number of certified full-time equivalent (FTE) staff times one-half (1/2) share;
   c. Pass one (1) school recognition point: number of certified full-time equivalent (FTE) staff times one (1) share; and
   d. Pace setter: number of certified full-time equivalent (FTE) staff times one (1) share.

(5) Beginning with rewards issued at the close of the 1999-2000 school year, a school shall earn rewards for use in the school based on the number of certified staff assigned to the school at the close of the biennium. A reward amount shall be determined based on the number of certified staff assigned to the school or combinations of schools earning the reward. A reward amount for partial time and other staff shall be calculated based on the proportion of time spent in the school.

Section 10. School Accountability Requirements of the "No Child Left Behind Act of 2001". (1) For the purpose of determining whether a school has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) measuring the percentage of students meeting or exceeding the state’s proficient level of academic achievement on the state assessments. The starting points for each accountability level shall be the percentage of students at or above the proficient level who are in the school at the 20th percentile in the state, based on enrollment, among all schools ranked by the percentage of students at or above the proficient level.

(2) For purposes of determining adequate yearly progress, a school shall be held accountable based on an aggregated average of the performance of the elementary, middle, or high school students who have been enrolled in the school for a full academic year in the accountability grades and producing school level accountability statistics including:

   a. Percent proficient and above in reading and mathematics;
   b. School classification criteria as described in subsection (5)(b) of this section [Accountability Indices];
   c. Graduation rates; and,
   d. Participation rates.

(3) If a school does not meet an annual measurable objective based on the current year aggregated average of the performance of the elementary, middle, or high school students, the aggregated average may be computed based on the most recent two (2) or three (3) years of student performance data in reading and mathematics.

(4) These statistics shall be used to determine if a school has met adequate yearly progress as measured against the annual measurable objectives established in Section 10(11) of this administrative regulation.

(5)(4) Meeting adequate yearly progress. Schools shall be determined to have made adequate yearly progress for a school year if:

   a. The school and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et seq., met district annual measurable objectives in both reading and mathematics or met the conditions described as "safe harbor" in 703 KAR 5 001;
   b. The school had a school classification of any category of progressing or meets goal in the CATS biennial or midpoint classification, whichever occurred more recently, [showed progress or met the criteria on the accountability index] at the elementary and middle school accountability levels; or for a school in the assistance category which demonstrates growth in the accountability index at or above the state average for the specific grade level classification as defined in 703 KAR 5 001;
   c. The school demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5 001; and
   d. The school had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq. Participation rate may be computed for the current year or, as an average of the most recent two (2) or three (3) years, to reach ninety-five (95) percent.

(6) [65] No child left behind (NCLB) Improvement school determination. A school shall be identified as a "NCLB Improvement school" if for two (2) consecutive years the school fails to make adequate yearly progress in the same content area as defined in 703 KAR 5 001 - reading or mathematics.

(7) [66] Reward or recognition. For a school meeting adequate yearly progress for two (2) consecutive years in both reading and mathematics, it shall receive a reward or recognition from the Department of Education as determined on an annual basis.

(8) [73] Before identifying a school as a no child left behind improvement school and implementing consequences required by 20 U.S.C. 6301 et seq., the local school district shall provide the school with an opportunity to review the school-level data on which the proposed identification is based. Not later than thirty (30) days after the district provides the school with the opportunity to review such school-level data, the district shall make public a final determination on the status of the school with respect to the identification.
(9) [46] Confidence intervals. A school shall be considered to have met the annual measurable objective in reading or mathematics if:
(a) The percent of students scoring proficient or above in a school meets or exceeds the annual measurable objective in reading or mathematics; or
(b) The annual measurable objective falls within the ninety-nine (99) percent confidence interval placed around the school's percent of students proficient and above. If more than the current year aggregated average of the performance of the elementary, middle, or high school students is used to compute an annual measurable objective, the confidence interval shall also be based upon the same most recent two (2) or three (3) years of student performance data upon which the aggregated average is based.
(10) [46] Students included in participation rates. A student enrolled in a Kentucky public school on the first day of the testing window for the school shall be included in the calculation of the participation rates for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.
(11) [46] Students included in determining whether a school meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a school for a full academic year shall be included in the school calculation of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.
(12) [44] Annual Measurable Objectives in Reading and Mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics shall be as follows.

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Section 11. No Child Left Behind School Consequences. (1) Tier 1 consequences for no child left behind improvement schools. If a Title I school is identified as a no child left behind (NCLB) improvement school, the local school district shall provide parental notification with explanations, required in 20 U.S.C. 6301 et seq., including information that all students enrolled in the school have the option to transfer, at the district's expense, to another public school operated and selected by the local school district that has not been identified as a school in improvement. The NCLB improvement school shall also write or revise its school plan.

(2) Tier 2 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of one (1) full year after being identified as an NCLB improvement school, the local school district shall provide supplemental services as required by 20 U.S.C. 6301 et seq., and continue to provide services mandated in Section 11(1) of this administrative regulation.

(3) Tier 3 consequences for NCLB improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of two (2) full years after being identified, the local district shall take corrective action as required by 20 U.S.C. 6301 et seq., and consistent with all relevant Kentucky statutes, and continue to provide services required in Section 11(1) and (2) of this administrative regulation.

(4) Tier 4 consequences for NCLB no child left behind improvement schools. If a Title I school identified as an NCLB improvement school fails to make adequate yearly progress in both reading and mathematics by the end of (3) full years after being identified, the local district shall plan for alternative school governance required by 20 U.S.C. 6301 et seq., and continue to provide services required in Section 11(1), (2), and (3) of this administrative regulation. If adequate yearly progress in both reading and mathematics is not made four (4) years after being identified, a NCLB improvement school, the alternative governance plan shall be implemented.

Section 12. Duration of Consequences. If a school identified as a NCLB improvement school makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5:001 for two (2) consecutive school years after the identification, the school shall no longer be identified as a NCLB improvement school and the school shall not be subject to federal consequences.

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 14, 2005 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 22, 2005, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Meri Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

1. Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes a single assessment system with two accountability dimensions: one addressing the requirements of KRS 158.6453 to determine school classifications, and a second addressing the conditions necessary to conform to federal assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
   (b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
   (c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics for the state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., including types of assessments to be administered, grades and content areas to be assessed, weights of each assessment, and details of who will be held accountable.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation provides the specifics for the implementation of the state-wide assessment and accountability programs which will be applied in all schools as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
   (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 provides specifics on how Kentucky will be compliant with the assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., and implements flexibility recently offered by the U.S. Department of Education.
      (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of schools in becoming compliant with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.
      (c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the assessment and accountability programs.
      (d) How the amendment will assist in the effective administration of the statute: This amendment will provide to schools specifics for the implementation of the requirements of the statewide assessment and accountability programs.
      (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.
      (4) Provide an assessment of how the above group or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: School staff will be provided the specifics for implementing the state-required assessment and accountability programs.
      (5) Provide an estimate of how much it will cost to implement this administrative regulation:
         (a) Initially: The additional cost for implementing this administrative regulation is currently estimated at least to be approximately $2.5 million annually (testing costs to add math and reading as required by federal law and to meet test results reporting timelines required by federal law).
         (b) On a continuing basis: The additional cost for continuing this administrative regulation is currently estimated at least to be approximately $2.5 million annually (testing costs to add math and reading as required by federal law and to meet test results reporting timelines required by federal law).
   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No Child Left Behind allocated federal assessment 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: The NCLB federal funding as mentioned above is expected to cover the increase in cost necessary to implement this administrative regulation.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increase any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.
   (9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools.

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)

703 KAR 5:130. School district accountability.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.029, 156.070, 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 authorizes the Kentucky Board of Education to promulgate an administrative regulation establishing a local school district accountability program. This administrative regulation establishes eligibility for district rewards, and it establishes procedures for determining assistance and other consequences for local school districts having schools in need of assistance as defined in 703 KAR 5:020.

Section 1. Required Participation in the National Assessment of Educational Progress. If a district is selected by the U.S. Department of Education or its designated contractors to participate in the state National Assessment of Educational Progress in reading, mathematics, and science at grades 4 and 8, the district shall participate fully.

Section 2. (1) Dropout data generated at an A2-A6 school shall be attributed to the school district in which the A2-A6 school is located, unless the district exercises the option in subsection (2) of this section.
   (2) If a district where an A2-A6 school is located can identify the A1 school which would have served the student if the student had not required services offered by the A2-A6 school, then the dropout data regarding that student shall be assigned to the A1 school. If a school district exercises this option, the district shall accurately report specific student dropout data to the district containing the accountable A1 school to be included in the nonacademic data reported to the Department of Education. If, after reasonable effort, the district cannot determine the proper A1 school of accountability, the district may request that the Kentucky Department of Education assign the data to the proper district.

Section 3 A local school district in which all schools are classified as progressing or meets goal under 703 KAR 5:020 and meets the dropout criteria established for schools in order to earn rewards in 703 KAR 5:020 shall be declared an exemplary growth district and shall receive rewards as determined by the Kentucky Board of Education.

Section 4. A district meeting adequate yearly progress in both reading and mathematics for two (2) consecutive years shall receive a reward or recognition as determined on an annual basis by the Department of Education.
Section 5. (1) A local school district shall be held accountable for providing its schools appropriate instructional leadership and instructional support.

(2) A local school district containing a school that is classified as Level 3 that was not classified as Level 3 the previous accountability cycle shall modify its district consolidated plan by including a specific support plan designed to assist each Level 3 school in improving its academic achievement. The plan shall address each of the areas listed in Section 6 of this administrative regulation and shall be sent to the local board of education members and to the Level 3 school council members or, if none exists, the principal, for approval.

(3) If a school is classified as Level 3 for two (2) or more consecutive accountability cycles, the school district shall be subject to a district audit conducted by a district evaluation team. The team shall review each of the areas outlined in Section 5 of this administrative regulation and the district’s implementation of the previous accountability cycle’s school support plan. The district audit team shall also evaluate the district as to district responsibilities using “Standards and Indicators for School Improvement”, which is incorporated by reference in 703 KAR 5:120.

Section 6. A local school district shall address the following areas in its school support plan:

(1) Instructional leadership shall include evidence that the local school district provides:
   (a) Instructional staff access to curriculum-related materials and training necessary to use curricular and data resources relating to the goals for Kentucky public schools established in KRS 158.645 and 158.6451 and the academic expectations established in 703 KAR 4:060 and the school’s performance trends, which include state assessment data and other student achievement performance measures identified by the district;
   (b) A professional development planning process that results in training activities provided for the certified staff within the goals established in KRS 158.6451 and the local needs assessment required in 704 KAR 3:035, annual professional development plan. The district shall include evidence that it equitably and effectively distributes professional development resources and has designed a district professional development program based on student achievement data;
   (c) A structure for instructional improvement including evidence that the local school district is actively supporting a systemic, school improvement planning process involving appropriate stakeholder groups, including parents, business representatives, and the general public, and the district is using all available and appropriate data;
   (2) Financial services and support shall include evidence that district resources have been distributed to each school equitably and consistently in accordance with the requirements of 702 KAR 3:246, School council allocation formula. The district shall also demonstrate that decisions about discretionary funds and other available resources not included in the school allocation formula are directed by an assessment of need or a required plan, all of which are data driven;
   (3) Safe and secure instructional facilities shall include evidence of adequate and equitable maintenance of facilities. In addition, safe and secure instructional facilities shall include evidence that the school district has reviewed and assisted in the implementation of the school-based safety plans dealing directly with issues related to discipline and a safe school environment; and
   (4) An effective certified employee evaluation program shall include evidence that the evaluation of the principal and certified staff has been implemented in a regular and timely manner consistent with the district’s approved evaluation plan submitted under KRS 156.101 and that the evaluation process focuses on improving instruction.

Section 7. The district evaluation team shall submit a report, including its recommendations, to the Commissioner of Education, the district superintendent, and the local board of education within two (2) weeks of its review. The report shall be presented by a member of the district evaluation team at a local board of education meeting with opportunity for public comment. The district evaluation team recommendations may include the following:

(1) No additional action is needed because the district is effectively implementing its school support plan which reflects strategies to meet the needs of the Level 3 school;
(2) Revisions to the school support plan are needed even though the district has effectively implemented its plan;
(3) Revisions in implementation procedures are needed as implementation of the school support plan is not effective; or
(4) A management audit as provided in KRS 158.785 and 703 KAR 3:205 is needed because the district has not effectively developed or implemented its school support plan.

Section 8. District Accountability Requirements of the “No Child Left Behind Act of 2001”. (1) For the purpose of determining whether a district has met the annual measurable objectives in reading or mathematics, the Kentucky Department of Education, using reading and mathematics data from the 2001-2002 school year, shall establish a single starting point for each content area at each accountability level (elementary, middle, or high school) as described in 703 KAR 5:020.

(2) For purposes of determining adequate yearly progress, a local district shall be held accountable based on an aggregated average of the performance of elementary, middle, and high school students who have been enrolled in the district for a full academic year and producing district level accountability statistics including:
   (a) Percent proficient and above in reading and mathematics;
   (b) School classification as described in subsection (5)(b) of the section [Accountability scores],
   (c) Graduation rates; and
   (d) Participation rates.

(3) If a district does not meet the annual measurable objective based on the current year aggregated average of the performance of the elementary, middle, or high school students, the aggregated average may be computed based on the most recent two (2) or three (3) years of student performance data in reading and mathematics.

(4) These statistics shall be used to determine if a district has met adequate yearly progress as measured against the annual measurable objectives established in 703 KAR 5:020, Section 10(11).

(5) (4) Meeting adequate yearly progress. A district shall be determined to have made adequate yearly progress for a school year if:
   (a) The district and all subpopulations of sufficient size identified in 20 U.S.C. 6301 et. seq., met the annual measurable objectives in both reading and mathematics or met the conditions described as “safe harbor” in 703 KAR 5:001;
   (b) The district had a school district classification of any category of progressing or meets goal in the CATS biennial or midpoint classification, whichever occurred more recently, [showed progress or met the criteria on the accountability index] at the elementary and middle school accountability levels; or for a school in the Assistance category which demonstrates growth in the accountability index if at or above the state average for the specific grade-level configuration as defined in 703 KAR 5:001;
   (c) The district demonstrated progress or met the annual goal for graduation rate as defined in 703 KAR 5:001; and
   (d) The district had a participation rate of at least ninety-five (95) percent of the enrolled students and ninety-five (95) percent of each subpopulation of sufficient size identified in 20 U.S.C. 6301 et. seq. Participation rate may be computed for the current year or, as an average of the most recent two (2) or three (3) years, to reach ninety-five (95) percent.

(6) (6) No child left behind (NCLB) improvement district determination. A district shall be identified as a “NCLB improvement district” if for two (2) consecutive years the district fails to make adequate yearly progress in the same content area as defined in 703 KAR 5:001 reading or mathematics.

(2) (6) Confidence Intervals. A district shall be considered to have met the annual measurable objective in reading or mathematics if:
   (a) The percent of students scoring proficient or above in a district meets or exceeds the annual measurable objective in reading or mathematics; or

-140-
(b) The annual measurable objective fails within the ninety-nine (99) percent confidence interval placed around the district’s percent of students proficient and above. If more than the current year aggregated average of the performance of the elementary, middle, or high school students is used to compute an annual measurable objective, the confidence interval shall also be based upon the same most recent two (2) or three (3) years of student performance data upon which the aggregated average is based.

(2) [[22]] Students included in the participation rates. A student enrolled in Kentucky public school district on the first day of the testing window at each accountability level shall be included in the calculation of the district’s participation rates calculated for the total population and for each subpopulation of sufficient size identified in 20 U.S.C. 6301 et seq.

(a) [[66]] Students included in determining whether a district meets annual measurable objectives. Beginning with data from the 2003-2004 school year, a student enrolled in a district for a full academic year shall be included in the district calculations of the percent of students performing at the proficient level or above in both reading and mathematics for purposes of federal accountability decisions.

(10) [40] Annual measurable objectives in reading and mathematics - 2003 through 2014. The annual measurable objectives for reading and mathematics for a district shall be those established in 703 KAR 5 020, Section 10(11).

(11) [[40]] Initial consequences for NCLB improvement districts. If a district is identified as a NCLB improvement district, the district:

(a) Shall, not later than three (3) months after being identified, develop or revise a district improvement plan. The district shall implement the plan expeditiously, but not later than the beginning of the next school year after the school year in which the district was identified as a NCLB improvement district,

(b) May request technical assistance from the Kentucky Department of Education; and

(c) May be subject to corrective action taken by the Kentucky Department of Education as required by 20 U S.C. 6301 et seq.

(12) [[11]] Subsequent consequences for NCLB improvement districts. If a district is identified as a NCLB improvement district and fails to make adequate yearly progress by the end of the second full school year after the identification, the district shall be subject to corrective action taken by the Kentucky Department of Education as required by 20 U.S.C. 6301 et seq.

(13) [42]] Duration of consequences. If a district identified as a NCLB improvement district makes adequate yearly progress in both reading and mathematics as defined in 703 KAR 5 001 for two (2) consecutive school years after identification, the district shall no longer be identified as a NCLB improvement district and the district shall not be subject to federal consequences.

GENE WILHOIT, Commissioner KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 14, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 22, 2005, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing 5 working days prior to the hearing, of their intent to attend. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes eligibility for district rewards, and it establishes procedures for determining assistance and other consequences for local school districts having schools in need of assistance as defined in 703 KAR 5 020. In addition, this administrative regulation establishes the school district accountability standards necessary to conform to federal assessment and accountability requirements established in the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158 6455 and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specifics of how Kentucky public school districts will be held accountable in the state-wide assessment and accountability programs as required by KRS 158.6453, 158.6455, and the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for the implementation of the state-wide assessment and accountability programs which will be applied in all school districts.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides specifics on how Kentucky will become compliant with the state assessment and accountability requirements of the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq., and implements flexibility recently offered by the United States Department of Education.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to specify the requirements of local school districts in becoming compliant with the "No Child Left Behind Act of 2001", 20 U.S.C. 6301 et seq.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying the requirements of the assessment and accountability program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide to local school districts specifics for the implementation of the requirements of the state-wide assessment and accountability programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Superintendents, principals, teachers, and students of local school districts in Kentucky, and supporting staff in the Kentucky Department of Education.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Local school district staff will be provided the specifics for implementing the state-required assessment and accountability programs.

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

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional costs to the agency to continue the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.

(9) TIERING. Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all local school districts.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers' Claims
(Amendment)


STATUTORY AUTHORITY: KRS 342.033, 342 260(1), 342.270(2), 342.285(1)

ESSSENCE, FUNCTION, AND CONFORMITY: KRS 342.250(1) requires the executive director [commissioner] to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the executive director [commissioner] to promulgate an administrative regulation establishing procedures for the resolution of claims. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" is defined by KRS 342.0011(10).

(3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Executive director [Commissioner]" is defined by KRS 342.0011(9).

(5) "Date of filing" means the date that:

(a) A pleading, motion, or other document is received by the Executive Director [Commissioner] at the Office [Department] of Workers' Claims in Frankfort, Kentucky, except:

1. Final orders and opinions of administrative law judges, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion; and

2. Documents delivered to the offices of the Office [Department] of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend which shall be deemed filed the following business day; or

(b) A document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

(6) "Employer" means individuals, partnerships, voluntary associations and corporations.

(7) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(8) "Latest available edition" means that edition of the "Guides to the Evaluation of Permanent Impairment" which the executive director [commissioner] has certified as being generally available to the office [department], attorneys, and medical practitioners, by posting prominently at the office's [department's] hearing sites the date upon which a particular edition of the "Guides to the Evaluation of Permanent Impairment" is applicable for purposes of KRS Chapter 342.

(9) "Special defenses" means defenses that shall be raised by "special answer" filed in accordance with Section 5(2)(d) of this administrative regulation.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 or 342.316 shall be designated as "plaintiff". Adverse parties shall be designated as "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.

(b) The Special Fund may be joined as a defendant in accordance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1986.

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and submitted in accordance with this administrative regulation.

(a) For an injury claim, an applicant shall submit a completed Form 101, Application for Resolution of Injury Claim.

(b) For an occupational disease claim other than coal workers' pneumoconiosis, an applicant shall submit a completed Form 102, Application for Resolution of Occupational Disease Claim.

(c) For an application for the Special Fund. For a hearing loss claim, an applicant shall submit a completed Form 103, Application for Resolution of Hearing Loss Claim.

(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The executive director [commissioner] shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant if the application is refiled in proper form within twenty (20) days of the date it was returned. The filing shall relate back to the date the application was first received by the executive director [commissioner]. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall be served upon the executive director [commissioner] and shall be served upon all other parties by mailing a copy to the party or, if represented, to that representative or the party's or representative's last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the executive director [commissioner].

(4) After the application for resolution has been assigned to an administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before administrative law judge (name)". Upon consolidation of claims, the most recent claim number shall be listed first.

(5)(a) All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating the facts.

(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 or
for interlocutory relief, shall be considered ten (10) days after the date of filing. A response shall be considered if filed on or before the tenth day after the filing of the motion.

(b)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:
1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;
4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;
5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed;
6. A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening; or
7. A certification of service that the motion was served on all parties as well as counsel for the parties.

(b) A designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.
2. The burden of completeness of the record shall rest with the parties to include so much of the original record, up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.
3. Except for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(c) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing.
2. Any response shall be filed within twenty (20) days of filing the motion to reopen.
3. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

(d) Any party may use the following forms provided by the office [department] for motions to reopen:
1. Form MTR-1, Motion to Reopen by Employee;
2. Form MTR-3, Motion to Reopen by Defendant; and
3. Form MTR-2, Motion to Reopen KRS 342.732 Benefits.

(e) A motion for allowance of a plaintiff's attorney fee shall:
(a) Be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request is based;
(b) Be served upon the adverse parties and the attorney's client;
(c) Set forth the fee requested and the mathematical computations establishing that the request is within the limits set forth in KRS 342.320; and
(d) Be accompanied by:
1. An affidavit of counsel detailing the extent of the services rendered and the time expended;
2. A signed and dated Form 109 as required by KRS 342.320(5); and
3. A copy of the signed and dated contingency fee contract.

(f) A motion for allowance of defendant's attorney's fee shall be:
(a) Filed within thirty (30) days following the finality of the decision; and
(b) Accompanied by an affidavit of counsel detailing:
1. The extent of the services rendered and the time expended;
2. The hourly rate and total amount to be charged; and
3. The date upon which agreement was reached for providing the legal services.

(g) The following motions relating to vocational rehabilitation training provided by the office [department] may be used by all parties:
(a) Form VRT, Petition for Vocational Rehabilitation Training; and
(b) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation.

(h) If a plaintiff is deceased, a motion to substitute party and continue benefits shall be filed on Form 11.

Sector 5. Application for Resolution of an Injury Claim and Response. (1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:
(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury;
(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;
(c) Medical release (Form 106);
(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:
1. A description of the injury which is the basis of the claim;
2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim;
3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;
(e) Documentation substantiating the plaintiff's preinjury and postinjury wages; and
(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 - Injury and Hearing Loss within forty-five (45) days after the notice of the scheduling order or within forty-five (45) days following an order sustaining a motion to reopen a claim.
(b) If a Form 111 is not filed, all allegations of the application shall be deemed admitted.
(c) The Form 111 shall set forth the following:
1. All pertinent matters which are admitted and those which are denied;
2. If a claim is denied in whole or in part, a detailed summary of the basis for denial;
3. The name of each witness whose testimony may be relevant to that denial; and
4. A description of the physical requirements of plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer.
(d) In addition to the Form 111, a defendant shall file a special answer to raise any special defenses in accordance with this paragraph.
1. A defendant may incorporate special defenses that have been timely raised in the Form 111.
2. A "special answer" shall be filed within:
   a. Forty-five (45) days of the scheduling order; or
   b. Ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence
3. A special defense shall be waived if not timely raised.
4. A special defense shall be pleaded if the defense arises under:
   a. KRS 342.035(3), unreasonable failure to follow medical advice;
   b. KRS 342.165, failure to comply with safety laws;
   c. KRS 342.316(7) or 342.335, false statement on employment application;
   d. KRS 342.395, voluntary rejection of KRS Chapter 342;
   e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;
   f. KRS 342.710(5), refusal to accept rehabilitation services; or
   g. Ruining of periods of limitations or reopens under KRS 342.185, 342.270, 342.316, or other applicable statute.
Section 6. Application for Resolution of an Occupational Disease Claim and Response. (1) To apply for resolution of an occupational disease claim, the applicant shall file Form 102 with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of last exposure and all jobs in which plaintiff alleges exposure to the hazards of the occupational disease;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report supporting the existence of occupational disease; and

(e) Social Security earnings record release form (Form 115).

(2)(a) Defendant shall file a notice of claim denial or acceptance on Form 111-OD.

1. Within forty-five (45) days after the notice of the scheduling order; and

2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111-OD, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

(3) For all occupational disease and hearing loss claims, the executive director [commissioner] shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

Section 7. Application for Resolution of a Hearing Loss Claim and Response. (1) To apply for resolution of a hearing loss claim, the applicant shall file Form 103 with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for hearing loss or ear complaints;

(c) Medical release (Form 106);

(d) One (1) medical report describing the hearing loss which is the subject of the claim; and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician; and

(e) Social Security earnings record release form (Form 115).

(2)(a) Defendant shall file a notice of claim denial or acceptance on Form 111 - Injury and Hearing Loss.

1. Within forty-five (45) days after the notice of the scheduling order; and

2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.

(b) In addition to the Form 111 - Injury and Hearing Loss, a defendant shall file a special answer to raise any special defenses in accordance with Section 5(2)(d) of this administrative regulation.

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date of issuance by the commissioner of the scheduling order.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the scheduling order;

(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and

(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge.

(4) All medical reports filed with Forms 101, 102, or 103 shall be admitted into evidence without further order if:

(a) An objection is not filed prior to or with the filing of the Form 111 - Injury and Hearing Loss;

(b) The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) A vocational report may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.

(2) Vocational reports shall be signed by the individual making the report.

(3) Vocational reports shall include, within the body of the report or as an attachment, a statement of the qualifications of the person making the report.

(4) An objection to the filing of a vocational report shall:

(a) Be filed within ten (10) days of the filing of the notice or motion for admission; and

(b) State the grounds for the objection with particularity.

(5) The administrative law judge shall rule on the objection within fifteen (15) days.

(6) If a vocational report is admitted as direct testimony, an adverse party may depose the reporting vocational witness in a timely manner as if on cross-examination at its own expense.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports shall be submitted on Form 107-1 (injury), Form 107-P (psychological), Form 108-OD (occupational disease), Form 108-CWP (coal workers' pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, except that an administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the executive director [commissioner] and the physician has been assigned a medical qualifications index number, reference may be made to the physician's index number in lieu of attaching qualifications.

(5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.

(6)(a) Upon notice, a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.

(b) Objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or the motion for admission.

(c) Grounds for the objection shall be stated with particularity.

(d) The administrative law judge shall rule on the objection within fifteen (15) days.

(7) If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for hearing loss or occupational disease other than coal workers' pneumoconiosis shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the executive director [commissioner] and the University of Kentucky and University of Louisville medical schools.

(2) Upon all other claims except coal workers' pneumoconiosis claims, the commissioner or an administrative law judge may direct appointment by the executive director [commissioner] of a univer-
sity medical evaluator. 

(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical information to the university medical school to whom the evaluation is assigned. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the university within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315;
(b) Submitted by way of medical reports, notes, or depositions;
(c) Clearly legible;
(d) Indexed;
(e) Furnished in chronological order;
(f) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and
(g) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;
2. Include the date of medical services; and
3. Include the nature of medical services provided.

(4) Upon the scheduling of an evaluation, the executive director [commissioner] shall provide notice to all parties and the employer shall forward to the party the necessary travel expenses as required by KRS 342.315(4). Upon completion of the evaluation, the executive director [commissioner] shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(5) The administrative law judge shall allow timely cross-examination of any medical evaluator appointed by the executive director [commissioner] at the expense of the moving party.

(6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

(7) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation may be grounds for imposition of sanctions.

Section 12. Interlocutory Relief. (1) During a claim, a party may seek interlocutory relief through:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);
(b) Medical benefits pursuant to KRS 342.020; or
(c) Rehabilitation services pursuant to KRS 342.710.

(2) Upon motion of any party, an informal conference:

(a) Shall be held to review the plaintiff's entitlement to interlocutory relief; and
(b) May be held telephonically.

(3) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter, the request shall be ripe for a decision.

(a) Entitlement to interlocutory relief shall be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party:
1. Is eligible under KRS Chapter 342; and
2. Will suffer irreparable injury, loss or damage pending a final decision on the application.

(b) Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm will result. The administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief shall be terminated and the claim removed from abeyance.

(6) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(7) A party seeking interlocutory relief may use the following forms:

(a) Motion for interlocutory relief, Form MIR-1;
(b) Affidavit for payment of medical expenses, Form MIR-2;
(c) Affidavit for payment of temporary total disability, Form MIR-3; and
(d) Affidavit regarding rehabilitation services, Form MIR-4.

Section 13. Benefit Review Conferences. (1) The purpose of the benefit review conference shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The benefit review conference shall be an informal proceeding.

(3) The date, time, and place for the benefit review conference shall be stated on the scheduling order issued by the executive director [commissioner].

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the benefit review conference.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier with settlement authority shall be present or available by telephone during the benefit review conference.

(6) The administrative law judge may upon motion waive the plaintiff's attendance at the benefit review conference for good cause shown.

(7) A transcript of the benefit review conference shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the benefit review conference.

(9)(a) Defendant shall provide a completed Form AWW-1, Average Weekly Wage Form.

(b) Plaintiff shall bring copies of unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatments.

(c) Each defendant shall bring copies of disputed medical bills and medical expenses.

(10) Ten (10) days before the benefit review conference, the parties shall exchange final stipulations and lists of known witnesses and exhibits that:

(a) Name each proposed witness;
(b) Summarize the anticipated testimony of each witness;
(c) For medical witnesses, include in the summary:
1. The diagnosis reached;
2. Clinical findings and results of diagnostic studies upon which the diagnosis is based;
3. The functional impairment rating assessed by the witness; and
4. A description of any work-related restrictions imposed; and
(d) Identify any exhibits.

(11) At the benefit review conference, the parties shall:
(a) Attempt to resolve controversies and disputed issues;
(b) Narrow and define disputed issues; and
(c) Facilitate a prompt settlement.

(12) A party seeking postponement of a benefit review conference shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(13) If at the conclusion of the benefit review conference the parties have not reached agreement on all the issues, the administrative law judge shall:
(a) Prepare a summary stipulation of all contested and uncontested issues which shall be signed by representatives of the parties and by the administrative law judge; and
(b) Schedule a final hearing.

(14) Only contested issues shall be the subject of further proceedings.

(15) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the benefit review conference and the date of the hearing and may limit the number of witnesses to be presented at hearing.

Section 14. Evidence. - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied
by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

(2) A motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended.

(3) The motion or supporting affidavits shall set forth:
(a) The efforts to produce the evidence in a timely manner;
(b) Facts which prevented timely production; and
(c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(4) In the absence of compelling circumstances, only one (1) extension of thirty (30) days shall be granted to each side for completion of discovery or proof by deposition.

(5) The granting of an extension of time for completion of discovery or proof shall:
(a) Enlarge the time to all:
   1. Plaintiffs if the extension is granted to a plaintiff; and
   2. Defendant if the extension is granted to a defendant; and
(b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section 24 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation if the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous.

(3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 23 to 37, inclusive, except for Civil Rules 27, 35, and 36 which shall not apply by practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:
(a) That the deposition is to be taken by telephone;
(b) The address and telephone number from which the call will be placed to the witness;
(c) The address and telephone number of the place where the witness will answer the deposition call; and
(d) Opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party shall contribute proportionate costs of the conference call.

(3) The executive director [commissioner] shall establish a medical qualifications index.
(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.
(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.
(c) Qualifications shall be revised or updated by submitting revisions to the executive director [commissioner].
(d) A party may inquire further into the qualifications of a physician.

Section 18. Hearings. (1) At the hearing, the parties shall present proof concerning contested issues. If the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered.

(3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

(4) The administrative law judge may pronounce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

(5) A decision shall be rendered no later than sixty (60) days following the hearing.

(6) The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion.

(7) An opinion or other final order of an administrative law judge shall not be deemed final until the administrative law judge has certified that a certification of mailing was sent to:
(a) An attorney who has entered an appearance for a party; or
(b) The party if an attorney has not entered an appearance.

(8) The parties with approval of the administrative law judge may waive a final hearing. Waiver of a final hearing shall require agreement of all parties and the administrative law judge. The claim shall be taken under submission as of the date of the order allowing the waiver of hearing. A decision shall be rendered no later than sixty (60) days following the date of the order allowing the waiver of hearing.

Section 19. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a final order or award of an administrative law judge, clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 20. Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. A discount shall not be taken on past due benefits by the employer or Special Fund. Lump sum settlements shall be calculated as follows:
(a) Determine the entire lump sum liability:
1. Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award;
2. Discount the number of weeks remaining in the award at the prescribed discount rate;
3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in the award.
   This product shall equal the entire future lump sum liability for the award; and
4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum shall represent the entire lump sum value of the award.
(b) Determine the employer's lump sum liability as follows:
1. The employer's future liability shall be computed by determining its total weeks of liability less the number of weeks of liability past due.
2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.
3. Multiply the number of past due weeks by the amount of the weekly benefit.
4. The employer's entire liability for a lump sum payment shall be determined by adding the results of paragraph (b)2 and 3 of this subsection.
(c) Determine the Special Fund's portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder shall be the Special Fund's lump sum liability.

(2) If the employer settles its liability for income benefits with the employee for a lump sum payment and a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

(3) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability for the claim. The Special Fund shall make all remaining payments for the balance of the compensable period.

(4) Pursuant to KRS 342.225, election by the Special Fund to settle on the same terms as the employer shall mean the Special Fund agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. "Same terms" shall not include any additional payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other benefits for which the Special Fund is not liable.

(5) Parties involved in a lump-sum settlement of future periodic payments shall use the discount factor computed in accordance with KRS 342.225(3).

(a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.
(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time and format of notice of appeal.
(a) Within thirty (30) days of the date a final award, order, or decision rendered by an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order, or decision may file a notice of appeal to the Workers' Compensation Board.
(b) As used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54 02(1) and (2).
(c) The notice of appeal shall:
1. Denote the appealing party as the petitioner;
2. Denote all parties against whom the appeal is taken as respondents;
3. Name the administrative law judge who rendered the award, order, or decision appealed from as a respondent;
4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the workers' compensation funds as a respondent; and
5. Include the claim number.
(d) Cross-appeal.
1. Any party may file a cross-appeal through notice of cross-appeal filed within ten (10) days after the notice of appeal is served.
2. A cross-appeal shall designate the parties as stated in the notice of appeal.
(e) Failure to file the notice within the time allowed shall require dismissal of the appeal.
(f) The executive director [commissioner] shall issue an acknowledgement to all parties of the filing of a notice of appeal or cross-appeal.

(3) Number of copies and format of petitioner's brief.
(a) The petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.
(b) An original and two (2) copies of the petitioner's brief shall be filed with the Executive Director [Commissioner] of the Office [Department] of Workers' Claims.
(c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the following manner:
(a) The name of each petitioner and each respondent shall be included in the brief.
2. The petitioner shall specifically designate as respondents all adverse parties.
3. The administrative law judge who rendered the award, order, or decision appealed from shall be named as a respondent.
(b) The workers' compensation claim number, or numbers, shall be set forth in all pleadings before the Workers' Compensation Board.
(c) The petitioner's brief shall state the date of entry of the final award, order, or decision by the administrative law judge.
(d) The petitioner's brief shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.
(e) The petitioner's brief shall include a "Need for Oral Argument" designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason or reasons for the request.
(f) The petitioner's brief shall include a "Statement of Benefits Pending Review" which shall set forth whether the benefits designated to be paid by the award, order, or decision for which review is being sought have been instituted pursuant to KRS 342.300.
(g) The organization and contents of the petitioner's brief for review shall be as follows:
1. A brief "Introduction" shall indicate the nature of the case.
2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited. This requirement may be eliminated for briefs of five (5) or less pages.
3. A "Statement of the Case" shall consist of a chronological summary of the facts and procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.
4. An "Argument" shall:
   a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and
   b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly presented for review and, if so, in what manner.
5. A "Conclusion" shall set forth the specific relief sought from the board.
6. An "Appendix" shall contain:
   a. Copies of the final award, order, or decision of the administrative law judge from which review is being sought;
   b. Any petitions for reconsideration filed by the parties pursuant to KRS 342.281;
   c. The administrative law judge's order addressing any petitions for reconsideration;
   d. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and
   e. Copies of prior board opinions or nonfinal or unpublished opinions of the Court of Appeals or Supreme Court in accordance with subsection (5) of this section.

(5) Respondent's brief, combined brief, or cross-petitioner's brief.
(a) Each respondent shall file an original and two (2) copies of a brief, combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the Executive Director [Commissioner] of the Office [Department] of Workers' Claims.
(b) The respondent's brief shall include a "Need for Oral Argument" similar to the statement required of the petitioner by subsection (4)(e) of this section.
(c) The respondent's brief shall include a "Statement of Bene-
fits Pending Review* similar to the statement required of the petitioner by subsection (4)(f) of this section.

(d) Respondent's counter-argument shall follow the organization and content of the petitioner's brief as set forth in subsection (4)(g) of this section.

(g) Reply briefs.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the respondent's brief was served or due, whichever is earlier.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index, or contents page shall not be required.

(c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within ten (10) days after the date on which the last cross-petitioner's brief was served or due, whichever is earlier.

(7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained in the document are true and made in good faith.

(8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief, and reply briefs on adverse parties.

(a) Before filing a notice of appeal, cross-appeal, or any brief with the Executive Director [Commissioner] of the Office [Department] of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(b) Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by paragraph (a) of this subsection. The statement shall identify by name each person served.

(c) The name of each attorney submitting a document to the Workers' Compensation Board with a current address and telephone number shall appear following its "conclusion."

(d) If the respondent is also a cross-petitioner, the respondent may file a combined brief or separate cross-petitioner's brief which shall address issues raised by the cross-appeal.

(e) If a separate cross-petitioner's brief is filed, the format shall be the same as a respondent's brief.

(9) Form of citations.

(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) If a party believes that a prior decision of the board or an unpublished decision by the Court of Appeals or Supreme Court has precedential value in relation to a material issue in the case being briefed, there is no published opinion that would serve as well, that decision may be cited if the party serves a copy on all other parties and the board.

(c) Service of an unpublished decision shall be accomplished by including a copy of the decision in the appendix for a brief filed in an appeal to the board.

(d) Citations for prior decisions of the board or unpublished decisions of the Court of Appeals or Supreme Court shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

(10) Number of pages.

(a) The petitioner's brief and the respondent's brief shall be limited to twenty (20) pages each.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) pages.

(d) The parties shall make every effort to comply with the above page limitations.

(e) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(11) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

(b) Rejection of a brief that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refiled occurs, the filing shall date back to the date of the original filing;

(c) Striking of an untimely response;

(d) A fine of not more than $500; or

(e) Dismissal.

(12) Motions.

(a) Except for a brief, a motion or pleading shall require the original to be filed with the Executive Director [Commissioner] of the Office [Department] of Workers' Claims.

(b) The style of the case, including the claim number and title of the motion or pleading, shall appear on the first page of the motion or pleading.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memora nda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating those facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(f) Before filing a motion or pleading with the Executive Director [Commissioner] of the Office [Department] of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of the document on each adverse party.

(g) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of a motion. An intermediate order may be issued on the signature of any board member.

(13) Oral arguments.

(a) Upon motion of a party or upon the board's own motion, the board may order an oral argument on the merits in a case appealed from a decision, award or order of an administrative law judge.

(b) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument.

(14) Continuation of pre-appeal pending appeal.

(a) Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of an appeal. A motion requesting the payment of these benefits shall not be required. Uncontested benefits shall include income benefits at an amount lessor than what was awarded if the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, decision, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing that:

1. The probability of the existence in fact of: a. Financial loss; b. Privation, suffering, or adversity resulting from insufficient income; or c. Detriment to the moving party's property or health if payment of benefits is not instituted; and
2. There exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief by the moving party and responses shall be shown by:
1. Affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence; or
2. Supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found
(15) Decisions.
(a) The board shall:
1. Enter its decision affirming, modifying, or setting aside the order appealed from; or
2. Remand the claim to an administrative law judge for further proceedings.
(b) Motions for reconsideration shall not be permitted.
(c) The decision of the administrative law judge shall be affirmed if:
1. A board member is unable to sit on a decision; and
2. The remaining two (2) board members cannot reach an agreement on a final disposition.
(16) Appeal from board decisions. If applicable, pursuant to KRS 342.290 the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

Section 22. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the executive director [commissioner] shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the executive director [commissioner] shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 23. Withdrawal of Records. (1) A portion of any original record of the office [department] shall not be withdrawn except upon order of the executive director [commissioner], an administrative law judge, or a member of the board.
(2) (a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days after the order resolving the claim has become final except x-rays filed in coal workers' pneumoconiosis claims which shall be returned to the party who filed the x-ray.
(b) A party filing an exhibit may make arrangements to claim an exhibit prior to that time.
(c) If an unclaimed exhibit has no money value, it shall be destroyed.
2. If an unclaimed exhibit has a value of more than $100, it shall be sold as surplus property.
3. If an unclaimed exhibit has a value of less than $100, it shall be donated to the appropriate state agency.

Section 24. Sanctions (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon determination that proceedings have been brought, prosecuted, or defended without reasonable grounds.
(2) A sanction may be assessed against an offending attorney or representative rather than against the party.
(3) If a party is a governmental agency and attorney's fees are assessed, the fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of similar services had a private attorney been retained.
(4) Failure of a party to timely file a pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 25. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and (a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award;
(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or
(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer;
(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.750.
(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for the payment, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund or Coal Workers' Pneumoconiosis Fund.
(4) Form UEF-P, Motion for Payment from Uninsured Employers' Fund, provided by the office [department] may be used by the employee.

Section 26. Forms. The Office [Department] of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted shall be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the executive director [commissioner]. Otherwise, the date of the second receipt shall be the filing date.

Section 27. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form 101, "Application for Resolution of Injury Claim", (revised June, 2005 [2000]), Office [Department] of Workers' Claims;
(b) Form 102, "Application for Resolution of Occupational Disease Claim", (revised June, 2005 [2000]), Office [Department] of Workers' Claims;
(d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), Office [Department] of Workers' Claims;
(e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997 Edition), Office [Department] of Workers' Claims;
(f) Form 106, "Medical History and Consent", (July 2003 Edition), Office [Department] of Workers' Claims;
(g) Form 107-I, "Medical Report - Injury", (revised April 2005 [June, 2000]), Office [Department] of Workers' Claims;
(h) Form 107-F, "Medical Report - Psychological", (revised April 2005 [June, 2000]), Office [Department] of Workers' Claims;
(l) Form 109, "Attorney Fee Election", (March 15, 1995 Edition), Office [Department] of Workers' Claims;
(m) Form 110-F, "Agreement-Fatalify", (revised January 2005);
(n) Form 110-A, "Agreement - Injury", (revised June, 2000), Office [Department] of Workers' Claims;
(o) [ttt] Form 110-O, "Agreement - Occupational Disease", (revised June, 2000), Office [Department] of Workers' Claims;
(q) [ggg] Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Office [Department] of Workers' Claims;
VOLUME 32, NUMBER 1 – JULY 1, 2005

(c) [69] Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Office [Department] of Workers’ Claims;
(e) [65] Form 115, "Social Security Release Form", (January 1, 1997 Edition), and Office [Department] of Workers’ Claims;
(f) [66] Form ANW-1, "Average Weekly Wage Form", (January 1, 1997 Edition), Office [Department] of Workers’ Claims;
(u) [67] Lump Sum Settlement Tables, (April 15, 1997 Edition), Office [Department] of Workers’ Claims;
(v) [68] Six (6) Percent Present Value Table (May, 1997 Edition);
(w) [69] Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition);
(x) [70] Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997 Edition);
(y) [71] Form MIR-3, Affidavit for Payment of Temporary Total Disability (May 29, 1997 Edition);
(z) [72] Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997 Edition);
(aa) [73] Form VRT, Petition for Vocational Rehabilitation Training (April 2005 [May 29, 1997 Edition]);
(bb) [74] Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition);
(cc) [75] Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997 Edition);
(dd) [76] Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);
(ee) [77] Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (April 2005 [May 29, 1997 Edition]);
(f) [78] Form UEF-P, Motion for Payment from Uninsured Employers’ Fund (April 2005 [May 29, 1997 Edition]); and
(g) [79] Form 11.1, Motion to Substitute Party and Continue Benefits (January 31, 2005).

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Workers’ Claims, Prevention Park, 657 Chamberlin [To Be Announced] Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2005, at 10 a.m. (EST) at the offices of the Office of Workers’ Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing may notify the agency in writing by July 15, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel Office of Worker’s Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the procedures used to adjudicate a worker’s compensation injury claim.
(b) The necessity of this administrative regulation: It is necessary for the prompt, orderly resolution of claims. Procedures must be established to fairly and timely adjudicate claims.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statute requires the executive director to set forth procedures to resolve claims.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The entire adjudicative process for injured workers is controlled by this regulation. The procedures assist injured employees and carriers/employers to get through the claims process in an orderly, timely fashion.

(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. These amendments are mostly housekeeping by updating regulation and forms pursuant to SB 41. We also added Form 11 to the forms list, because it had never been incorporated by reference as required by KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: It is imperative to get our forms updated to accurately assist claimants and employers with our claims process.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to authorizing statutes by correctly slating the name of our agency and agency head and by updating forms to assist in the resolution of claims.
(d) How the amendment will assist in the effective administration of the statutes: The forms contain correct references and required appropriate information necessary for administrative law judges and board members to appropriately resolve claims.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured workers in Kentucky, all employers with nonexempt employees, workers’ compensation insurance carriers, all governments with employees.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Since amendments are housekeeping in nature, there should be no major impact on the above groups. Our agency had been changed to an "office" by a previously executive order. Most of the amendments are simply correcting forms and the administrative regulation.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There may be a minimal cost initially to implement the amendments by printing new forms. Forms will be changed over time so the costs will be minimal. Many forms will be changed as copies run out so the costs would be incurred in normal course of business.
(b) On a continuing basis: No additional continuing costs.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Office of Workers’ Claims normal budget will be used.
(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 are necessary.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees are established.
(9) TIERING: Is tiering applied? Tiering is not applied, because these amendments apply equally to all parties involved in a claim.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers’ Claims
(Amendment)


RELATES TO: KRS 342.0011, 342.340, 342.342, 342.345, 342.347
STATUTORY AUTHORITY: KRS 342.250(1), 342.340, 342.345

- 150 -
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the Executive Director [commissioner] of the Office [Department] of Workers' Claims to promulgate administrative regulations necessary to implement KRS Chapter 342. KRS 342.340 and 342.345 require the executive director [commissioner] to establish requirements for individual self-insurers. This administrative regulation establishes minimum requirements for an individual employer who self-insures workers' compensation liability.

Section 1. Definitions. (1) "Cessation liability security" means the security covering liability associated with anticipated claims occurring upon cessation of all operations of an individual self-insurer in the state.

(2) "Executive director [commissioner]" is defined by KRS 342.001(3).

(3) "Employer" means an employer subject to KRS Chapter 342.

(4) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(5) "Service organization" means a person or entity which provides services including claims adjustment, safety engineering, construction of statistics, preparation of loss or tax reports, purchase of excess insurance, or preparation of another required self-insurance report.

(6) "Specific excess insurance" means an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

Section 2. Certification. A person, party, or employer shall not act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the executive director [commissioner]. A certification issued by the executive director [commissioner] shall remain in effect until [on an annual basis; unless otherwise revoked or modified by the executive director pursuant to Section 11 of this administrative regulation.

Section 3. Application. (1) An initial application for individual self-insurance shall be submitted to the executive director [commissioner] on form SI-02 and shall include:

(a) The employer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. A subsidiary which is to be covered under the application, or who is already self-insured, shall be identified with the relationship to the applicant described fully;

(b) A statement by the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of employees at each site;

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance shall be received by the executive director [commissioner] at least five (5) days prior to certification of self-insurance;

(d) A copy of the proposed surety deposit or letter of credit instrument required by Section 5 of this administrative regulation.

The surety shall be received by the executive director [commissioner] prior to certification to self-insure;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to underwrite to self-insure;

(i) If the applicant is a corporation, a guarantee from the subsidiary's parent corporation on form SI-01;

(j) An individual or service organization responsible for administration or adjustment of a workers' compensation claim shall provide satisfactory evidence to the executive director [commissioner] as to the organization's qualifications to administer and adjust a workers' compensation claim; and

(k) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in subsection (4) of this section.

(2) An applicant may perform, if qualified, a function of a service organization or may contract with a service organization to perform those functions. An applicant's or service organization's employees and agents shall be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance. Upon receipt of a complete application and all required documents, the executive director [commissioner] shall approve or reject status as a self-insurer within thirty (30) days.

(4) A contract with a service organization shall include one (1) of the following provisions:

(a) The service organization shall adjust to a final conclusion each claim that results from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured, or

(b) The service organization shall adjust each claim for a period of sixty (60) days following an order from the executive director [commissioner] finding the self-insured employer in default unless a substitute service organization has been procured.

(5) Variation from the requirements of this section, for good cause shown, may be sought by application to the executive director [commissioner].

Section 4. Approval. (1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the executive director [commissioner] shall consider all relevant factors including the following:

(a) The financial strength of the applicant or guarantor;

(b) The excess insurance policy and retention level;

(c) The experience of the service organization;

(d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;

(e) Profit and loss history;

(f) Workers' compensation loss history of the applicant;

(g) The prospect of increased losses by the employer's cessation of operations in Kentucky;

(h) The number of employees and degree of hazard to which employees are exposed;

(i) Profit programs; and

(j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor shall have assets in excess of all liabilities of at least $10,000,000 [or $3,000,000]. Variance from this requirement may be granted to a currently certified individual self-insurer who has demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted if the executive director [commissioner] finds:

(a) The applicant has complied with all sections of this administrative regulation; and

(b) It is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.

Section 5. Specific Excess Insurance and Surety Requirements. (1) Specific excess insurance shall be purchased with:

(a) A coverage limit of at least $10,000,000 per occurrence; and

(b) A maximum retention level of $1,000,000 unless a different retention level is specifically approved by the executive director.

(2) To be eligible to write specific excess insurance for an individual self-insurer in Kentucky, a casualty insurance company on its latest financial statement shall reflect a minimum policyholder surplus of not less than $25,000,000.

(b) The casualty insurance company shall have demonstrated
excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

(3) Each employer who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide primary security in the form of a continuous surety bond on Form SI-03 or by irrevocable letter of credit on Form SI-04, in an amount specified by the executive director (commissioner), but not less than $500,000. In fixing the amount of security, the executive director (commissioner) shall consider all relevant factors including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky. The executive director (commissioner) may direct that separate cessation liability security be deposited pursuant to Section 8 of this administrative regulation. The amount shall be reviewed and recalculated at the same times as the primary security.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of SI-05 in an amount specified by the executive director (commissioner), but not less than $500,000. To be acceptable, a security which is deposited shall be eligible under the laws of Kentucky for investment by insurance companies.

(5) If an employer is no longer self-insured, the amount of surety shall be set by the executive director; however,

(a) A minimum surety of $250,000 shall be maintained for a period of ten (10) years; and

(b) A minimum surety of $100,000 shall be maintained for the eleventh to twentieth year after the employer's departure from self-insured status.

Section 6. Coverage of Subsidiary or Related Corporations. A corporation having a wholly-owned subsidiary may submit one (1) joint application to the executive director (commissioner), if the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) days written notice to the executive director (commissioner).

Section 7. Examination and Review of Filings. A certified public accountant or other qualified individual may be employed by the Office (Department) of Workers' Claims for the purpose of reviewing and analyzing the annual filings of individual self-insurers, and applicants for self-insurance, and for making recommendations based on that review.

Section 8. Cessation Liability Security. (1) Cessation liability security shall be distinct from the primary security required in Section 5 of this administrative regulation.

(2) Upon cessation of all operations of an individual self-insurer in the state of Kentucky, cessation liability security shall be called for payment of a claim after all other security posted by the individual self-insurer has been exhausted.

(3) Cessation liability security shall be issued in one (1) or more of the following forms:

(a) A surety bond or insurance policy issued by a casualty insurance company qualified pursuant to Section 5 of this administrative regulation;

(b) An escrow account;

(c) An irrevocable letter of credit.

(4) If an individual self-insurer secures its workers' compensation obligation by obtaining standard workers' compensation insurance or by joining an approved self-insurance group, the executive director (commissioner) may release the cessation liability security, effective as of the date of the employers acquiring other coverage.

Section 9. Annual filings. (1) An individual self-insured employer shall file with the executive director (commissioner) on or before 120 days from the end of the self-insured's fiscal year:

(a) The statement of financial condition required by KRS 342.347(2);

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the executive director (commissioner), including relevant claim data; and

(c) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in Section 3(4) of this administrative regulation.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the executive director (commissioner).

(3) If the annual required filings are not timely made, the self-insurance certificate shall not be renewed.

Section 10. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) If there is a change in majority ownership of a parent company, the individual self-insurer shall notify the executive director (commissioner) within thirty (30) days of that change. A new application to self-insure shall be filed upon a change in ownership.

(2) If an employer is added, merged, acquired, or otherwise brought within the self-insurance coverage, the individual self-insured shall notify the executive director (commissioner) within thirty (30) days and the adequacy of the surety bond shall be reviewed and may be increased accordingly.

(3) If the payroll of the individual self-insurer during a quarter exceeds 25 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the executive director (commissioner) and the surety bond requirements may be reviewed and the bond shall be increased accordingly.

Section 11. Revocation or Modification of Certification. (1) If the executive director (commissioner) receives information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a show cause order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for hearing.

(2) The executive director (commissioner) may revoke the self-insurance certification upon finding that any of the following conditions exist:

(a) The individual self-insurer is operating in:

1. Contravention of its submitted application; or

2. In material violation of this administrative regulation;

(b) The individual self-insurer or parent guarantor no longer has the financial stability to assure its ability to meet its obligations for payment of workers' compensation benefits; or

(c) The insurer has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity.

(3) If the executive director (commissioner) revokes an individual self-insurer's certification, the executive director (commissioner) shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund.

(4) Self-insurance certification may be revoked by the executive director (commissioner) after issuance of a show cause order setting forth the grounds of revocation and setting a hearing date in not less than ten (10) days. The hearing shall be conducted pursuant to Section 12 of this administrative regulation. During the pendency of a hearing or appeal, the executive director (commissioner) may utilize the surety deposit provided by the individual self-insurer to make a payment of workers' compensation benefits which is currently due for which a payment is not being made by the individual self-insurer or its service organization.

Section 12. Aggrieved Parties. (1) A person aggrieved by an action of the executive director (commissioner) may request a hearing by filing a written request with the executive director (commissioner) setting forth the basis. Upon receipt of a request, the executive director (commissioner) shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty (30) days after the notice.
VOLUME 32, NUMBER 1 – JULY 1, 2005

(2) No later than thirty (30) days after the termination of the hearing, the executive director [commissioner] shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The executive director's [commissioner's] final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.

(3) The ruling of the executive director [commissioner] may be appealed to the Franklin Circuit Court in accordance with KRS 138.140.

Section 13. Incorporation by Reference. (1) The following materials are incorporated by reference:
(a) Form SI-01 (December, 1999 edition);
(b) Form SI-02 (January, 2000 edition);
(c) Form SI-03 (July, 2000 edition);
(d) Form SI-04 (June, 2000 edition); and
(e) Form SI-05 (June, 2000).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM P. EMRICK, Executive Director APPROVED BY AGENCY: June 14, 2005 FILED WITH LRS: June 15, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2005, at 10 a.m., ET at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2005, 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend is received by this 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth requirements for workers' compensation individual self-insured employers.
(b) The necessity of this administrative regulation: It is imperative to implement KRS 342.340 and 342.345 which require the executive director to establish requirements for individual self-insurers.
(c) How this administrative regulation conforms to the content of the authorizing statutes: It sets forth the requirements and minimum standards for workers' compensation individual self-insurers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It sets forth standards for employers to meet to become self-insured and maintain self-insured status.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Change requirement for assets in excess of all liabilities to $10,000,000 Set a maximum retention level of $1,000,000 for specific excess insurance unless set at a different level by the executive director. Set minimum amount of surety for employers who were formally self-insured.
(b) The necessity of the amendment to this administrative regulation: The Office of Workers' Claims is charged with responsibility of ensuring that workers' compensation individual self-insurers are financially secure and able to meet all claims of injured employees.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments set forth requirements that help our agency ensure that individual self-insurers will meet injured workers' claims and be financially secure.
(d) How the amendment will assist in the effective administration of the statutes: The amendments assist our agency by requiring individual self-insurers to provide satisfactory proof of their financial ability to pay directly the benefits for an injured worker.
(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 165 approved individual self-insurers for workers' compensation.
(3) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Employers who wish to be self-insured will be required to meet the $10,000,000 of assets over amount of liabilities. Self-insured employers need to maintain maximum retention level for specific excess insurance. Former self-insurers must have surety set by executive director with minimum amount to maintain.
(4) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost for agency. Some self-insured employers may face increase for excess insurance.
(b) On a continuing basis: Same as (a).
(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Normal budget for the Office of Workers' Claims.
(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in funding is not necessary.
(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or directly or indirectly increased
(8) Tiering:
(a) Tiering applicable?
(b) Tiering not applicable.
(c) Amendments are applied equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers' Claims
(Amendment)

803 KAR 25:030. Special fund and employer; Joint liability.

RELATES TO: KRS 342.120, 342.316

STATUTORY AUTHORITY: KRS 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.120 and 342.316 require that an administrative regulation be promulgated outlining the method of reimbursement for compensation paid when an employer and the Special Fund are jointly liable. The function of this administrative regulation is to prescribe these methods of reimbursement.

Section 1. Reimbursement of Carriers and Self-insured Employers by Special Fund. Each insurance carrier and self-insured employer applying for reimbursement by the Special Fund under the provisions of KRS 342.120(4) or 342.316(13)(a) shall furnish the Division of Workers' Compensation Funds [board] quarterly a statement [in duplicate] showing the name of the employee, the amount of compensation paid such employee, and the periods for which such compensation has been paid, which statement shall be filed with the Division of Workers' Compensation Funds [board] within thirty (30) days from the end of each quarter for which reimbursement is sought, or within such further time thereafter as the
VOLUME 32, NUMBER 1 – JULY 1, 2005

Division of Workers' Compensation Funds [board] may for good cause permit, and shall be certified by a designated officer or employee of the employer or insurance carrier.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2005, at 10 a.m. (EST) at the offices of the Office of Workers’ Claims, Prevention Park, 657 Chamberlain Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel, Office of Workers’ Claims, Prevention Park, 657 Chamberlain Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation outlines the method of reimbursement for compensation paid when an employer and the special fund are jointly liable.
(b) The necessity of this administrative regulation: KRS 342.120 and 342.316 require this method of reimbursement be set forth in an administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation prescribes the methods of reimbursement.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation outlines the method of reimbursement for compensation paid.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments are mere clarifications and insertion of correct names. One amendment eliminates duplication of reports which are not necessary.
(b) The necessity of the amendment to this administrative regulation: The administrative regulation is technically wrong by having statement sent to “board” when the reports are sent to Division of Workers’ Compensation Funds.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments are clarifications and do not substantively change the administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: It clarifies the administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurance carriers and self-insured employers.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There should be no significant impact except to eliminate duplication of paperwork.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No costs to implement.
(b) On a continuing basis: Same as (a).
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Special fund budget.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. No fees are established.
(f) TIERING: Is tiering applied? Tiering is not applied, because the changes affect everyone equally.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers’ Claims
(Amendment)


RELATES TO: KRS 342.019, 342.020, 342.035, 342.735
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Executive Director [Commissioner] of the Office [Department] of Workers’ Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) "Medical fee schedule" means the Workers’ Compensation Medical Fee Schedule for Physicians.
(2) "Physician" is defined by KRS 342.001[11](32), and shall include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Office [Department] of Workers’ Claims does not apply.

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342; and
(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:
(a) Another fee schedule of the Office [Department] of Workers’ Claims applies; or
(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the Executive Director [Commissioner] pursuant to 803 KAR 25:110.

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying a relative value unit for the medical procedure by the applicable conversion factor.
(2) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.
(2) Pursuant to KRS 342.035, medical fees due an out-of-state physician shall be calculated under the fee schedule in the same manner as for an in-state physician.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Workers' Claims, Prevention Park, 657 Chamberlain [To Be Announced] Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2005, at 10 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlain Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel, Office of Workers' Claims, Prevention Park, 657 Chamberlain Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4484, fax (502) 564-0851.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a medical fee schedule for physicians.
(b) The necessity of this administrative regulation: In KRS 342.035, the executive director is required to ensure that all fees, charges, and reimbursements for medical services are limited to charges that are fair, current, and reasonable.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By establishing a medical fee schedule for physicians, the Office of Workers' Claims ensures fair, reasonable, consistent medical costs to all injured workers, employers, and insurance carriers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have a medical fee schedule for effective cost control in the workers' compensation system.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will incorporate the updated fee schedule. We have added language to state that any physician out of this state is deemed to accept the fee schedule.
(b) The necessity of the amendment to this administrative regulation: Our agency is required to update the fee schedule. It is appropriate to incorporate a new updated fee schedule. It is also important that Kentucky workers who visit doctors out-of-state are charged consistent fees in accordance with the fee schedule.
(c) How the amendment conforms to the content of the authorizing statutes: The updated fee schedule conforms with the statute by providing fees that are reasonable and current.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide an updated fee schedule and keep costs fair and reasonable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured workers, employers, insurance carriers, and physicians.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Insurance carriers will pay physicians for treatment of injured workers in accordance with prices set by the medical fee schedule.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No cost to implement this administrative regulation
(b) On a continuing basis: Same as (a).
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The usual budget of the Office of Workers' Claims.
(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 is no increase in funding to our agency. There may be some increase for particular medical services in accordance to what is reasonable and fair in the commercial market.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation updates the amounts paid to physicians for medical services provided to injured workers. The fee schedule was established in 1995. The fees are adjusted to ensure fees and charges are fair, current, and reasonable compared to similar treatment of injured persons where treatment is paid by general health insurers.
(9) TIERING: is tiering applied? Tiering is not applied, because this regulation is equally applied to all affected parties.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Labor
Office of Workers' Claims
(Revision)

803 KAR 25:170. Filing of claims information with the Office [Department] of Workers' Claims.

RELATES TO: KRS 342.038, 342.039
STATUTORY AUTHORITY: KRS 342.039
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.039 requires the Executive Director [Commissioner] of the Office [Department] of Workers' Claims to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC). This administrative regulation establishes the requirements for filing claims information with the Office of Workers' Claims [department].

Section 1. Definitions. (1) "Carrier" is defined in KRS 342.011(6).
(2) "Executive Director [Commissioner]" means the Executive Director [Commissioner] of the Department of Workers' Claims appointed pursuant to KRS 342.228.
(3) "Data collection agent" means a business or entity that keys information in an electronic format and transmits the resulting data to a value added network used by the Office [Department] of Workers' Claims.
(4) "Value added network" means a business or entity that accepts electronic data transmissions and sorts the transmissions for delivery to various addressers.

Section 2. Reporting Requirements. (1) Beginning with work-related injuries and occupational diseases reported to employers on or after January 1, 1996, each carrier shall file information required on the Form IA-1 with a data collection agent or a value added network designated by the Office [Department] of Workers' Claims, in electronic format, according to the time periods prescribed by KRS 342.038.
(2) Beginning with work-related injuries and occupational diseases reported to employers on or after January 1, 1996, each carrier shall file the information required on the Form IA-2 with a...
VOLUME 32, NUMBER 1 – JULY 1, 2005

data collection agent or a value added network designated by the Office [Department] of Workers' Claims, in electronic format:

(a) As soon as practicable and not later than one (1) week from the date payments to an employee are commenced, terminated, changed, or resumed, and

(b) Every sixty (60) days during temporary total disability.

(3)(a) Beginning July 1, 1999, for medical bills paid on or after that date, each carrier shall file a medical report containing the information extracted from the standardized uniform health claim forms.

(b) This information shall be filed with a data collection agent or a value-added network designated by the Department of Workers' Claims, in electronic format not later than three (3) weeks following payment of the bill.

Section 3. Data Collection Agents. (1) If a carrier is unable to transmit the information required under this Office [Department] of Workers' Claims using its own facilities and resources, it shall employ a data collection agent capable of transmitting the information to a value added network utilized by the Office [Department] of Workers' Claims.

(2) The Office [Department] of Workers' Claims shall maintain a directory of authorized data collection agents.

Section 4. Acknowledgements. An acknowledgement of an accepted filing made pursuant to this administrative regulation, or a request by the Office [Department] of Workers' Claims for resubmission of a report due to incomplete or incorrect information, shall be made in electronic format through the same data collection agent or value added network used for the filing.

Section 5. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) Form IA-1 (October 10, 1995 edition); and

(b) Form IA-2 (October 10, 1995 edition).

(2) This material may be inspected, copied, or obtained at the Office [Department] of Workers' Claims, Prevention Park, 657 Chamberlain [To Be Announced] Avenue, Frankfurt, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on July 22, 2005, at 10 a.m. (EST) at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfurt, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel, Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-5550, ext. 4464, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for insurance carriers to electronically file claims data to the Office of Workers' Claims.

(b) The necessity of this administrative regulation: Our agency is required to administer the statutory requirement for filing first reports of injury. It is imperative to set forth time requirements so this information is filed appropriately.

(2) Explain how this administrative regulation conforms to the content of the authorizing statute. The executive director is required by KRS 342.039 to promulgate administrative regulations to file detailed claim information.

(3) Explain how this administrative regulation currently assists or will assist in the effective administration of the statute. The regulation is designed to get those reports to our agency timely and to provide other agencies with the required information.

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

(a) How the amendment will change this existing administrative regulation. The amendment will delete the requirement for carriers to file medical claim information with our agency.

(b) The necessity of the amendment to this administrative regulation. It is imperative to stop this requirement to save employers and carriers costs in electronically sending this information when our agency is unable to adequately utilize this information.

(c) How the amendment conforms to the content of the authorizing statute. This requirement for medical bill information is not being fully utilized. The statute would not authorize obtaining information which is not used.

(5) Explain how the amendment will assist in the effective administration of the statute. The amendment will save thousands of dollars for employers and carriers by not requiring medical information to be filed electronically with our agency.

(6) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All insurance carriers, self-insurance groups, and individual self-insurers are affected by this administrative regulation.

(7) Provide an assessment of how the above groups or groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be a great savings by the elimination of this requirement which should be passed onto the employers of the commonwealth.

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

(a) Initially: Savings to carriers of thousands of dollars.

(b) On a continuing basis: Same as initially.

(9) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There should be no cost to this agency to implement and enforce this amendment since we are deleting a requirement.

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

(11) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established.

(12) TIERING: Is tiering applied? Tiering is not applied, because the amendment will be applied equally to all carriers.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Insurance
Division of Health Insurance Policy and Managed Care (Amendment)

805 KAR 14:007. Rate and form filing for health insurers.

RELATES TO: KRS 304.4-010, 304.14-120, [304.44-140]; 304.14-193, 304.17A-095, 2005 Ky. Acts ch. 144 sec. 2

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: 2005 Ky. Acts ch. 123 created the Office of Insurance to be headed by an executive director. KRS 304.2-110 authorizes the Executive Director [Commissioner] of Insurance to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid
to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. Executive Order-064, filed December 23, 2003, created the Environmental and Public Protection Cabinet. This administrative regulation establishes rate and form filing procedures for health insurers.

Section 1. Definitions. (1) "Basic health benefit plan" means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A [Department means the Department of Insurance.]

(2) "Executive director" means the Executive Director of Insurance.

(3) "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.

(4) "Health benefit plan" is defined in KRS 304.17A-005(18).

(5) "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, provider agreement, or risk sharing arrangement.

(6) "Office" means the Office of Insurance.

Section 2. Filing Procedures. (1) Health insurance rate and form filings shall be accompanied by a face sheet and verification form, Form HIPMC-F1, April 2006 [June, 2002] edition.

(2) Health policy forms filed under policy form certification shall be accompanied by a certification form, Form HIPMC-F2, September, 2000 edition.

(3) Individual health insurance form filings shall be accompanied by actualization certification, Form HIPMC-R4, September, 2000 edition.

(4) An insurer issuing, delivering, or renewing a:

(a) Health benefit plan shall complete and attach to each plan filed a health benefit plan summary sheet-form filings, Form HIPMC-F35, July, 2002 edition; and

(b) Basic health benefit plan shall complete and attach to each plan filed a basic health benefit plan summary sheet-form and rate filings, Form HIPMC-RF-25, April, 2005 edition.

(5) Except for health benefit plan rate filings pursuant to KRS 304.17A-005, a rate filing shall be accompanied by a rate filing information form, Form HIPMC-R35, June, 2002 edition.

(6) The office [department] shall use Form HIPMC-F16, May 2002 edition, to request additional information from a health insurer if a rate or form filing cannot be accepted as submitted.

(7) Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form. Other numbers shall not appear on the form except to the extent necessary to the form.

(8) Each submission shall be accompanied by a submittal letter on the stationery of the filing entity which intends to use a form, listing by number all forms being submitted together with a brief description of each.

(9) If a form is submitted with alternate pages or alternative [optional] benefit, the submittal letter required by subsection (8) of this section shall state under what conditions each alternate page or alternative [optional] benefit may be used, and any alternate page or alternative [optional] benefit shall be identified by a unique form number.

(10) If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.

(11) Except for insert pages or alternate pages, each form shall contain the corporate name and address of the health insurer.

(12) A form filed for approval shall not contain any advertising or marketing material.

(13) If a new form is submitted, the filing entity shall identify the unique features of the form.

(14) If a filing includes a form which was previously disapproved, the filing entity shall assign the form a new form number.

Section 3. Filing Entity. A filing entity may include in a filing any number of forms or documents, filed together on a particular date, pertaining to a single line of insurance.

Section 4. Date of Filing. Since KRS 304.4-010(2) requires all fees payable under the insurance code to be collected in advance, the period of time in which the executive director [commissioner] may affirmatively approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the office [department]:

(1) The rate or form filing.

(2) Appropriate fee pursuant to 806 KAR 4 010, Section 1(21); and

(3) Forms required by Sections 2 and 6 of this administrative regulation, as appropriate.

Section 5. Use of Forms and Rates. (1) Except for advertising or marketing material, a form or rate shall not be used in Kentucky until:

(a) The form or rate has been approved or certified by the office [department], which shall occur within the sixty (60) day time frame specified in KRS 304.14-120(2) except as follows:

1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and

2. If the executive director [commissioner] grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit corrected forms or rates or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved.

(b) If rates for the form are required by KRS 304.14-120 to be approved, the appropriate rate schedule [thereafter] has been approved.

(2) Any document subject to a filed only process, including advertising, marketing material, provider directories, provider agreements, subcontractor agreements or risk-sharing arrangements shall be filed with the office [department] and shall be subject to review in accordance with KRS 304.14-120 [14-140].

Section 6. Form Revision. If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filing entity setting forth:

(1) All changes contained in the newly filed form;

(2) The form being replaced and the date the replaced form was approved, withdrawn, or submitted, as the case may be; and

(3) The effect, if any, the changes have upon the policy or the rates applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed:

(a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;

(b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and

(c) Forms required by Section 2 of this administrative regulation.

(2) An appropriate fee pursuant to 806 KAR 4.010, Section 1(22), shall be submitted with each filing.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9. Electronic Filings. (1) Health insurance companies may file their rates and forms in an electronic format established by the National Association of Insurance Commissioners, in the manner prescribed by that format.

(2) Any electronic filing shall be in lieu of a physical filing.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form HIPMC-F1, "Face Sheet and Verification Form" [Department of Insurance], April, 2005 [June, 2002] edition;

(b) Form HIPMC-F2, "Health Policy Forms Filing Certification Privilege Program Form" [Department of Insurance], September, 2000 edition;

(c) Form HIPMC-R4, "Individual Health Forms Actuarial Certifi-
VOLUME 32, NUMBER 1 – JULY 1, 2005

RATIONALE FORM” (Department of Insurance), September, 2000 edition;
(form) Form HIPM C-F35, “Health Benefit Plan Summary Sheet-
Form Filings (Department of Insurance), July, 2002 edition;
(e) Form HIPM C-R36, “Rate Filing Information Form (Department of Insurance), June, 2002 edition, [and]
(f) Form HIPM C-R37, “Additional Health Information Request” (Department of Insurance), May, 2002 edition; and
(g) Form HIPM C-R25, “Basic Health Benefit Plan Summary Sheet and Rate Filings”, April, 2005 edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office (Department) of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office’s (department’s) internet web site at: http://doi.ky.gov (www.doi.state.ky.us).

LAUJANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Acting Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: May 5, 2005
FILED WITH LRC: May 13, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2005, at 9 a.m., (ET) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 584-0886, fax (502) 584-1403.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes rates and form filing procedures for health insurers so the executive director will have relevant information to approve or disapprove a filing
(b) The necessity of this administrative regulation: KRS 304.14-120 requires all policy forms to be delivered or issued in Kentucky to be filed with and approved by the executive director before being issued or delivered. KRS 304.14-130 requires the executive director to determine whether the benefits in the policy are reasonably related to the premium charged. This administrative regulation is necessary to establish the procedures for insurers to file forms and rates with the executive director in accordance with the law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes rates and form filing procedures for health insurers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the executive director in the proper review of form and rate filings in accordance with the 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 emergency amendment establishes required rate and form filings for basic health benefit plans.
(b) The necessity of the amendment to this administrative regulation: 2005 RS HB 278, Section 2, enacted by the 2005 GA, includes an “emergency” provision, which allows insurers offering health benefit plans to now offer 1 or more “basic health benefit plans.” As with all other insurance rates and forms used by insurers, insurers will be required to submit information relating to the new basic health benefit plan rates and forms. Currently, 806 KAR 14:007, provides instructions and forms for the submission of this required information; therefore, emergency amendments to this existing administrative regulation are required to clarify and communicate new requirements for the submission of information relating to the basic health benefit plan.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes rate and form filing procedures for health insurers.
(d) How the amendment will assist in the effective administration of the statutes: The emergency amendment to this administrative regulation will continue to assist the executive director in the proper review of form and rate filings in accordance with the law by establishing the procedure for form and rate filings of basic health benefit plans.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects the 60 licensed insurers writing health insurance in the state of Kentucky.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation: if new, or by the change if it is an amendment: The changes made by this emergency administrative regulation will not create a significant impact to health insurers. The amended regulation would simply detail the rate and form filing procedures for newly created basic health benefit plans.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: Initially: The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file this information, the cost to insurers should not increase significantly, if at all.
(b) On a continuing basis: The Insurers will be responsible for copying and delivery costs. Because insurers are currently required to file this information, the cost to insurers should not increase significantly, if at all.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation?: The source of funding that would be used for the implementation and enforcement of this administrative regulation would be the budget of the Office of Insurance.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Office does not anticipate that any increase in fees or funding will be necessary to implement this regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all insurers that issue, deliver, or renew health benefit plans in the state of Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Office of Insurance
Division of Health Insurance Rate and Managed Care
(Amendment)

806 KAR 17:150. Health benefit plan rate filing requirements.

RELATES TO: KRS 304.17A-005, 304.17A-095, 304.17A-
VOLUME 32, NUMBER 1 – JULY 1, 2005

0952, 304.17A-0954, 304.17A-132, 304.17A-134, 304.17A-139, 304.17A-149, 304.17A-410, 304.17A-430, 304.17A-450, Ky Acts ch. 123 created the Office of Insurance headed by an executive director. KRS 304.17A-095(1) authorizes the Executive Director [Commissioner] of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-095(7) authorizes the executive director [commissioner] to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the executive director [commissioner] will have relevant information to approve or disapprove the rate filing.

Section 1. Definitions. (1) "Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustments for case characteristics or health status.

(2) "Base new business rate change" means:
(a) For a product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and,
(b) For a product within a market segment class of business, equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.

(3) "Base premium rate" is defined in KRS 304.17A-095(3).

(4) "Basic health benefit plan" means any plan offered to an individual, a small group, or an employer-organized association that limits coverage to physicians, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of KRS 304.17A.

(5) "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(6) "Covered person" is defined in KRS 304.17A-500(3).

(7) "Date of filing" means the date the office [department] confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the office [department].

(8) "Duration" means a policy year of twelve (12) months, measured from the date of issuance of a policy, with each succeeding twelve (12) month period being a new duration.

(9) "Executive director" means the Executive Director of Insurance.

(10) "FFS" means a fee for service product type.

(11) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17A-055(15).

(12) "Health benefit plan" is defined in KRS 304.17A-055(19).

(13) "Health benefit plan region" or "geographic region" means each one of the eight (8) allowable rating regions for health benefit plans identified in HIPMC-R33 (12/00 /7/00).

(14) "HMO" means a health maintenance organization product type.

(15) "Index rate" is defined in KRS 304.17A-055(21).

(16) "Insurance purchasing outlet" is defined in KRS 304.17A-750(4).

(17) "Large group" is defined in KRS 304.17A-055(26).

(18) "Maternal change" means any change to a rate filing, except that a change in value of an existing rate factor other than trend shall not be considered a maternal change.

(19) "Office" means the Office of Insurance.

(20) "POS" means a point of service product type.

(21) "PPO" means preferred provider organization product type.

(22) "Small group" is defined in KRS 304.17A-055(35).

(23) "Target loss ratio" means a loss ratio that an insurer files which projects and guarantees a loss ratio on an annual basis.

Section 2. Scope. (1) A health benefit plan rate filing to which the standards of KRS 304.17A-095 apply, shall include the information required by Sections 3 through 10 [9] of this administrative regulation.

(2) The period of time in which the executive director will [commissioner must] affirmatively approve or disapprove the filing shall not begin until the date of filing.

(3) The insurer shall not use the proposed rates for any purpose until the date of filing.

(4) The filing and fee shall not be deemed received until the office [department] confirms that:
(a) All information required by Sections 3 through 10 [9] of this administrative regulation has been received; and,
(b) The appropriate fee, as set forth in 858 KAR 4:010, has been paid.

Section 3. Health Benefit Plan Rate Filing Procedures. (1) A health benefit plan rate filing submission shall occur if there is:
(a) A new rate filing; or,
(b) A material change to a previously-approved rate filing.

(2) The following shall be included and properly completed in a health benefit plan rate filing submission:
(a) Form HIPMC-R32, the Health Benefit Rate Filing Information Form;
(b) The following filing fee or the domiciliary state fee, whichever is greater:
   1. $100 for an original or new filing; or
   2. Fifty (50) dollars for an amendment to a filing;
(c) Form HIPMC-F1, Face Sheet and Verification Form;
(d) Signed actuarial memorandum prepared in accordance with Sections [5] [6] and 7 of this administrative regulation;
(e) The Income and Expense Worksheet; and
(f) Except for large groups, Certification Form HIPMC-R34; and
(g) Form HIPMC-RE-25, if a basic health benefit plan is included.

(3) Two (2) copies of all written material shall be submitted to the office [department].

(4) One (1) copy of all written material shall be submitted to the Attorney General's office by the insurer at the same time as the submission to the office [Department of Insurance]. This shall include:
(a) An amendment;
(b) An update; or
(c) Additional information;
(d) A response to an inquiry from the office [department].

(5) Two (2) copies of all correspondence with the office [department] or other state agency concerning a filing shall be submitted to the office [department].

(6) A photocopy of the most recent annual financial report [to shareholders or policyholders of the company] shall be attached to the filing as an exhibit.

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for:
(a) Each market segment as follows:
   1. Individual;
   2. Small group;
   3. Association; and
   4. Large group.
(b) Each employer-organized association as defined in KRS 304.17A-054(1)(c), except as otherwise authorized by employer-organized associations pursuant to KRS 304.17A-054(2).

(2) A large group rate filing may include each product type offered as follows:
(a) FFS;
(b) POS; and
(c) HMO.

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:
(a) FFS and POS, or
(b) POS, HMO, and PPO.
Section 5. Employer-organized Association Rate Filings. (1) An employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing. Each employer-organized association that provides the insurer with written permission to have rates based on experience other than their own may have experienced combined for rate determination. Proposed rates for a combination of associations shall be contained in one (1) filing.

(2) Each employer-organized association rate filing shall contain documentation demonstrating that the entity is an employer-organized association pursuant to KRS 304.17A-054(1)(c).

(3) If an insurer is proposing to begin marketing a health benefit plan to an employer-organized association, a rate filing may be based on the standard plan benefits, including appropriate formulas and rate factors within the limitations outlined in KRS 304 17A-054. The filing shall include:

(a) Factors for any plan to be offered; and
(b) A detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.

(4) If the insurer receives written permission from an employer-organized association regarding combining experience with other employer-organized associations, the insurer shall submit two (2) copies of the written permission to the executive director at the time of the rate filing. The written permission shall include the following:

(a) A statement giving the insurer permission to rate the employer-organized association on experience other than the employer-organized association’s own experience;
(b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;
(c) Name, address, and telephone number of the insurer to which permission is given;
(d) Month, day, and year that permission is given to the insurer; and
(e) Number of eligible association members.

Section 6. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the following:

(a) Actuarial Standard of Practice No. 8, "Regulatory Filings for Rates and Financial Projections for Health Plans (Doc. No. 010, 1990 Edition)", American Academy of Actuaries;
(b) Actuarial Standard of Practice No. 28, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996)", American Academy of Actuaries;
(c) Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Ratemaking (Doc. No. 060, adopted October, 1997)", American Academy of Actuaries; and

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;
(b) A statement identifying when the company will begin using the proposed rates;
(c) A discussion of rate development which shall include a detailed explanation of the following:
   1. The effects of each of the following mandated benefits which discussion shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected:
      a. For benefit plans offering pharmacy benefits, coverage for amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic disorders in accordance with KRS 304 17A-139(4);
      b. Hearing aids and related services in accordance with KRS 304 17A-132;
      c. Anesthesia and hospital or ambulatory surgical facility services in connection with dental procedures in accordance with KRS 304.17A-149; and
      d. Medical and surgical benefits with respect to mastectomies pursuant to KRS 304.17A-134;
   2. The claim cost development that shall include an explanation of the following:
      a. Methodology;
      b. Any assumption including the following:
         (i) Trend, along with supporting analysis which supports the trend level selected;
         (ii) Any benefit change;
         (iii) Any utilization or cost-per-service change;
         (iv) Any demographic change;
         (v) Any change in medical management;
         (vi) Any change in provider contracts; and
         (vii) Any other assumption used; and
   3. Experience by month, including exposures or members, earned premium, paid claims, incurred claims and incurred loss ratio, for the last three (3) years for this product, or for a similar product if this filing is for a new product;
   4. Development and printout of the base premium rates, index rates, and corresponding highest premium rates and, any applicable GAP premium rates for the standard plan option, if offered, by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and the highest area factor. If the filing contains more than one (1) product, the information required by this subparagraph shall be provided for each product separately. For any filing containing proposed rates for more than [(4)] one (1) class of business, the information required by this subparagraph shall be provided separately for each class of business;
   5. Effective January 1, 2001, for a company that has existing GAP enrollees:
      a. Index rates for the non-GAP classes of business may be set by excluding the experience of the GAP enrollees;
      b. Index rates for the GAP class of business shall be set by considering the block of experience for the new GAP class of business and the former class of business which included GAP enrollees; and
      c. Rates for the GAP class of business may not exceed 150 percent of the index rates established in clause b of this subparagraph;
   6. Every factor for each case characteristic including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.
      a. A health benefit plan region other than the eight (8) identified in HIPMC-R33 shall not be used for a geographic region factor adjustment; and
      b. Include any healthy lifestyle discount factor, along with an explanation of the determination of that factor, and where that factor is applicable;
   7. The anticipated pricing loss ratio including a detailed justification of the following load factors:
      a. The percentage allocated for the administrative expense assumption, with an explanation for any change from the factor used for existing rates. It shall be explained how these costs are allocated among each benefit plan design and attach demonstrative documentation as an exhibit;
      b. The percentage allocated for the commission assumption with an explanation for any change from the factor used for existing rates;
      c. The percentage allocated for federal, state, and local government tax assumptions with an explanation for any change from the factor used for existing rates;
      d. The percentage allocated for the investment income assumption with an explanation for any change from the factor used for existing rates;
      e. The percentage allocated for the profit and contingency assumption with an explanation for any change from the factor used for existing rates;
      f. The percentage allocated for assessments pursuant to KRS 304.17B-221; and
      g. The percentage allocated for any other identified factor;
      (d) Detailed explanation, with example, of the following:
         1. The method for determining a small group composite rate;
         2. When a small group composite rate is recalculation; and
3. The group size that is eligible for a composite rate calculation;
(e) Each health benefit plan description and the applicable benefit factor adjustment, or any other method of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan to which this filing applies;
(f) Detailed discussion of the manner in which the projected amount of net assessments and payments [refunds] under KRS 304.17B-021 and 304.17B-023(3) [17A-460 and 304.17A-470] is included in establishing the proposed rates in the filing as required by KRS 304.17A-095;
(g) Information regarding how fees are paid to providers as follows:
1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and
2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments and other payments for the rate filing period;
(h) If a trend rate is used, include the time period to which the trend applies, not to exceed twelve (12) months, and the applicable annual trend rate and the periodicity of the factor, such as monthly or quarterly;
(i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers or enrollees; and
(j) Information regarding each class of business which shall include:
1. Identification of each class of business;
2. Justification of each separate class of business; and
3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates, and, effective January 1, 2001, excluding any GAP class of business.
(k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum:
1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to the following markets:
   a. Individual;
   b. Association, and
   c. Small group business; and
2. That all the proposed rates are in compliance with KRS 304.17A-0952 or 304.17A-0954, as applicable.

Section 7. Large Group Rate Filings. (1) The actuarial memorandum for a large group rate filing shall include the following information:
(a) The information provided in Section 6(2)(a), (b), (c), (d), (e), (f), (g), (h) and (i);
(b) Development of rating basis including each adjustment for the following:
   1. Age;
   2. Gender;
   3. Family composition;
   4. Benefit plan;
   5. Industry;
   6. Healthy lifestyle; and
   7. Any other adjustment;
(c) Any formula for new and renewal business including a definition of each term used in the formula;
(d) Credibility criteria used in conjunction with experience rating;
(e) Detailed explanation of any change in the manual rating formula or experience rating formula;
(f) Detailed explanation of any change in factors that would be used in any formula;
(g) Any periodic trend rate applied in the formula;
(h) The composite effect of any change in formula and formula factors; and
(i) Detailed explanation of any trend assumption used in experience rating.
(2) Certification Form HIPMC-R34 shall not be required for a large group rate filing.

(2) Individual market filings and small group association market filings shall meet the following requirements regarding guaranteed loss ratios by duration:
(a) The guaranteed loss ratio for the first duration shall not be less than sixty (60) percent of the guaranteed lifetime loss ratio specified in the policy:
   1. Expected loss ratios may vary by month within the first duration;
   2. The loss ratio for the first month shall not be less than fifty (50) percent of the guaranteed loss ratio for the first duration;
   3. The loss ratio for each month following the first month shall be greater than the loss ratio for the immediately preceding month; and
   4. The average of the loss ratios for all months shall be equal to the guaranteed loss ratio for the first duration;
(b) The guaranteed loss ratio for a specific duration shall not be less than the guaranteed loss ratio for the previous duration;
(c) The guaranteed loss ratio for the third duration shall not be less than the guaranteed lifetime loss ratio specified in the policy;
(d) The average of the first six (6) guaranteed loss ratios by duration shall not be less than the guaranteed lifetime loss ratio specified in the policy;
(e) The guaranteed lifetime loss ratio shall not be less than that contained in KRS 304.17A-095(6)(a); and
(f) The guaranteed loss ratios by duration are guaranteed for all policies issued under the policy form and shall be specified in the policy.
(3) A refund shall be calculated as follows:
(a) Refundable premium for any year shall be the sum of the current year’s refundable premium for each duration. Each duration’s refundable premium shall be [the] calculated by subtracting the three (3) items in subparagraphs 1, 2, and 3 of this paragraph from the current year’s earned premium by duration and multiplying the result by the ratio of:
   1. Earned premium by duration; and
   2. Earned premium by duration minus the items in clauses a and b of this subparagraph and any premium related expenses in clause c of this subparagraph;
   a. State and local premium taxes allocated to that duration;
   b. Assessments pursuant to KRS 304.17B-021 allocated to that duration; and
   c. The sum of incurred claims, preferred provider organization expenses, case management and utilization review expenses, and reinsurance premiums, minus reinsurance recoveries, allocated to that duration, divided by the guaranteed loss ratio in the policy, for that duration;
   d) If the annual earned premium is less than $2,500,000, the minimum refund is calculated by refundable premium multiplied by the annual earned premium, divided by $2,500,000;
   e) If the annual earned premium is $2,500,000 or greater, the minimum refund is the refundable premium;
   f) The refund to be paid to a policyholder pursuant to KRS 304.17A-095(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund; and
   e) The amount of the refund shall include the computation of interest in accordance with KRS 304.17A-095(6)(f) in determining whether payment shall be made to the policyholder or to the Kentucky State Treasurer.
(4) An audit shall be conducted in accordance with KRS 304.17A-095(6)(b) which shall include the following:
(a) Guaranteed lifetime loss ratio;
(b) Guaranteed loss ratios by duration;
(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities, and description of method of allocation by duration;
(d) Earned premium by duration and description of method of allocation by duration,
(e) State premium tax by duration and description of method of allocation by duration;
(f) Local premium tax by duration and description of method of allocation by duration;
(g) Assessments by duration and description of method of allocation by duration;
(h) Incurred claims by duration and description of method of allocation by duration;
(i) Preferred provider organization expenses and description of method of allocation by duration;
(j) Case management and utilization review expenses and description of method of allocation by duration;
(k) Reinsurance premiums less reinsurance recoveries and description of method of allocation by duration;
(l) Description of reinsurance and identity of reinsurer;
(m) Statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees or any other related administration expenses;
(n) Statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings and any other [such] savings;
(o) Statement of refund checks not being issued before approval of the audit;
(p) Calculation of minimum refundable premium, actual refunded premium and refund carryover;
(q) Calculation of percent of earned premium that is to be refunded;
(r) Method used to calculate a policyholder's actual refund;
(s) Historical experience for the policy form since inception;
(t) Auditor's certification; and
(u) Actuarial certification.
(5) An initial rate filing shall be a formal filing and a subsequent rate filing may be by actuarial certification.

Section 9. Minimum Guaranteed Loss Ratio Requirements for an Amended Policy Form or a previously filed Minimum Guaranteed Loss Ratio Statement shall be the requirements of KRS 304.17A-905(6).
(2) An insurer shall provide a minimum guaranteed loss ratio for each rate filing, when the insurer files a rate filing as proposed for filing by the insurer or the reinsurer for the insurer or the reinsurer. The statement shall be made by the insurer and include an actuarial certification verifying that rates remain in compliance with the minimum guaranteed loss ratio filed with the office.
(3) The initial rate filing and subsequent statements shall include an actuarial certification which includes information demonstrating compliance with KRS 304.17A-9052 and Section 6 of this administrative regulation..
(4) The currently approved loss ratio on file with the office under a prior approval process or a minimum guaranteed loss ratio shall be deemed a reasonable loss ratio for any amended policy forms or amended minimum guaranteed loss ratios. Rate filings requesting a change in the previously-approved loss ratio shall require documented evidence to demonstrate increased administrative cost or other evidence that the insurer would not be able to achieve previously approved profitability targets.
(5) If experience is filed by duration pursuant to Section 8(2) of this administrative regulation, a refund shall be calculated in accordance with Section 8(3) of this administrative regulation.
(6) If experience is filed by utilizing a target loss ratio and the actual achieved loss ratio is less than the target loss ratio, a refund shall be determined as follows:
(a) If the annual earned premium is less than $2,500,000, the minimum refund shall be calculated by the refundable premium multiplied by the annual earned premium divided by $2,500,000;
(b) If the annual earned premium is $2,500,000 or greater, the minimum refund shall be the actual achieved loss ratio minus the target loss ratio;
(c) The refund to be paid to a policyholder pursuant to KRS 304.17A-905(6)(d) shall be calculated by dividing the earned premium for that policyholder by the total earned premium for the year, and multiplying that percentage of the aggregate refund of the policy form by the aggregate refund.
(7) If experience is filed by duration, an audit shall be conducted in accordance with Section 8(4) of this administrative regulation.
(8) If experience is filed by target loss ratio, an audit shall be conducted in accordance with KRS 304.17A-905(6)(b), which shall include the following:
(a) Guaranteed lifetime ratio;
(b) Actual loss ratio;
(c) Analysis of prior year estimated items, including uncollected premiums and unpaid claim liabilities;
(d) Earned premium;
(e) State premium tax;
(f) Local premium tax;
(g) Assessments;
(h) Incurred claims;
(i) Preferred provider organization expenses;
(j) Case management and utilization review expenses;
(k) Reinsurance premiums less reinsurance recoveries;
(l) Description of reinsurance and identity of reinsurer;
(m) Statement that incurred claims do not include administrative expenses, late payment charges, punitive damages, legal fees or any other related administration expenses;
(n) Statement that incurred claims have been reduced for the full amount of all provider discounts, rebates, coordination of benefits savings, subrogation savings and any other savings;
(o) Statement of refund checks not being issued before approval of the audit;
(p) Calculation of minimum refundable premium, actual refunded premium and refund carryover;
(q) Calculation of percent of earned premium that is to be refunded;
(r) Method used to calculate a policyholder's actual refund;
(s) Historical experience for the policy form since inception;
(t) Auditor's certification; and
(u) Actuarial certification.
(9) An initial rate filing shall be a formal filing and a subsequent rate filing may be by actuarial certification.
(10) An initial rate filing shall be required for insurers electing to file under a minimum guaranteed loss ratio as provided for in KRS 304.17A-905(6).

Section 10. Amendments to Previously-Approved Rate Filings. (1) For any change that is not a material change, an insurer shall submit an amendment to a rate filing previously-approved by the office [department] which shall include the following:
(a) Identification of the OOI [OOG] File No. stated in the Order of Approval received by the insurer for the previously-approved rate filing;
(b) Date of approval of the previously-approved rate filing;
(c) The proposed effective date of the amendment;
(d) A fifty ($50) dollar filing fee;
(e) Two (2) copies of a properly completed HIPMC-F1 form; and
(f) Two (2) copies of a properly completed HIPMC-R32 form.
(2) Each amendment filing shall contain documentation to demonstrate the necessity of the amendment which shall include the following:
(a) An itemized list of the information to be amended and the reason for the amendment;
(b) A statement identifying the impact of the amendment in relation to benefits and costs on current and future policyholders;
and

(c) A statement identifying the impact of the amendment on the insurer.

(3) One (1) copy of the amendment filing and all written material relating to the filing shall be submitted to the Attorney General's Office by the same time as the submission to the Office [Department of Insurance].

(4) The amendment to a previously-approved rate filing shall not be deemed received until the Office [department] confirms that all information and the fifty ($50) dollar fee required in this section have been received.

(5) Within sixty (60) days of confirmation of receipt of the required information and fee, the Office [department] shall notify the insurer in writing of the acceptance or rejection of the amendment

(6) The sixty (60) day confirmation time shall not begin until the Office [department] confirms that the required information and fee have been received.

Section 11. [401 Material Incorporated by Reference: (1) The following material is incorporated by reference:

(a) HIPMC-R32 (10/02), "Health Benefit Plan Rate Filing Information Form;"

(b) HIPMC-F1 (04/05) (06/02), "Face Sheet and Verification Form;"

(c) Actuarial Standard of Practice No. 8, "Regulatory Filings for Rates and Financial Projections for Health Plans (Doc. No 010, 1996)" American Academy of Actuaries.

(d) Actuarial Standard of Practice No. 24, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996), American Academy of Actuaries;"

(e) Actuarial Standard of Practice No. 31, "Documentation in Health Benefit Plan Rate Making (Doc. No. 060, adopted October, 1997), American Academy of Actuaries;"

(f) Actuarial Standard of Practice No. 41, "Actuarial Communication (Doc. No. 086, adopted March, 2002), American Academy of Actuaries;"

(g) Income and Expense Worksheet (1998 Edition);

(h) HIPMC-R33 (12/00), "Health Benefit Plan Regions;" [and]

(i) HIPMC-R34 (05/01), Certification Form; and

(j) HIPMC-R26 (04/05), "Basic Health Benefit Plan Summary Sheet-Form and Rate Filings."

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office [Department] of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Office's [department's] internet Web site at http://koi.prr.ky.gov [www.koi.prr.ky.gov].

R. GLENN JENNINGS, Executive Director
CHRISTOPHER LILLY, Acting Commissioner
LAJUNA S. WILCHER, Secretary
APPROVED BY AGENCY: May 5, 2005
FILED WITH LRC: May 13, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, 2005, at 9 a.m. ET at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for filing health benefit plan rates so the executive director will have relevant information to approve or disapprove a rate filing.

(b) The necessity of this administrative regulation: KRS 304.17A-055 authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format for the filings. This administrative regulation is needed to ensure that health benefit plans provide the required information necessary for the executive director to approve or disapprove rate filings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-055(7) authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format for the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the executive director will have relevant information to approve or disapprove the rate filings.

(d) How this administrative regulation affects you or your business: This administrative regulation may assist or will assist in the effective administration of the statutes. This administrative regulation will enable the executive director to receive the information required to approve or disapprove a health benefit plan rate filing as required by KRS 304.17A-055.

(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 emergency amendment will add requirements for basic health benefit plan rate filings. The amendment will also clarify the filing requirements for insurers who wish to use a minimum guaranteed loss ratio for amending existing policy forms or to amend a previously filed minimum guaranteed loss ratio. This regulation also clarifies that a change in a trend factor is a material change for rate filing amendment purposes.

(b) The necessity of the amendment to this administrative regulation: 2005 RS HB 278, Section 2, allows insurers to offer basic health benefit plans. As this statute was enacted with an emergency clause and is now in effect, the language in this regulation must be amended on an emergency basis to provide for basic health benefit plan rate filings. Also, 2005 RS SB 209, Section 2, is emergency legislation, which allows insurers offering health benefit plans to amend existing policy forms to provide for a minimum guaranteed loss ratio or to amend the minimum guaranteed loss ratio previously filed with the office. The amendments relating to loss ratios in this regulation must be amended on an emergency basis to clarify the filing requirements for insurers who wish to amend these existing policy forms or amend a previously filed minimum guaranteed loss ratio.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. KRS 304.17A-055(7) authorizes the executive director to promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format for the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the executive director will have relevant information to approve or disapprove the rate filing.

(d) How the amendment will assist in the effective administration of the statutes: The emergency amendment to this administrative regulation will continue to enable the executive director to receive the information required to approve or disapprove a health benefit plan rate filing as required by KRS 304.17A-055, and will also detail relevant requirements relating to 2005 RS SB 209, Section 2, and 2005 RS HB 278, Section 2.

(3) List the type and number of individuals, businesses, organi-
izations, or state and local governments affected by this administrative regulation. This regulation will affect the 60 licensed insurers writing health insurance in this state.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The amendment to this administrative regulation will add rate filing requirements for basic health benefit plans and will provide guidance to insurers in requesting to use a minimum guaranteed loss ratio for amending existing policy forms or to amend the minimum guaranteed loss ratio previously filed with the office. Insurers will be required to file information in conformity with current law regarding health insurance rates needed by the executive director to determine whether the rates should be approved or disapproved. The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file information under 806 KAR 17:150, the costs to the insurers for filing under this amendment should not increase significantly, if at all.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file information under 806 KAR 17:150, the costs to the insurers for filing under this amendment should not increase significantly, if at all.
(b) On a continuing basis: The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file information under 806 KAR 17:150, the costs to the insurers for filing under this amendment should not increase significantly, if at all.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding that would be used for the implementation and enforcement of this administrative regulation would be the budget of the Office of Insurance.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The emergency amendment to this administrative regulation will not require an increase in fees or funding.

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

(9) Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all insurers that issue, deliver, or renew health benefit plans in the state of Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(Amendment)

921 KAR 3:020. Financial requirements.


STATUTORY AUTHORITY: KRS 194A.010, 194A.050(1), 194B.010, 194B.050(4), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010 [194B.010] requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires [194B.050(4)-authorizes] 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. 7 C.F.R. 271.4 requires the cabinet to administer the Food Stamp Program within the state. This administrative regulation establishes the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program. In addition, 7 U.S.C. 2014 allows states to exclude additional [rare-uncommon] types of income and resources if these specific types of income and resources are not counted in the state's TANF or [and] Medicaid Programs.

Section 1. Financial Eligibility Requirements. (1) As established in 7 C.F.R. 273, promulgated by the Food and Nutrition Service of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:
(a) Income limitations; and
(b) Resource limitations.
(2) Participation in the program shall be limited to a household that is prevented from obtaining a more nutritious diet because of its income.
(3) The income eligibility standards shall be:
(a) Derived from the federal income poverty guidelines as defined in 42 U.S.C. 9902(2) for the forty-eight (48) contiguous states; and
(b) Adjusted annually each October 1, as published in the Federal Register.

Section 2. Countable Income. All nonexcluded income shall be considered in determining eligibility, including the following:
(1) Wages earned by a household member, including wages received by a striker as defined in 921 KAR 3:035, Section 5(10)[96];
(2) The gross income of a self-employment enterprise, including the total gain from the sale of capital goods or equipment related to the business, excluding the cost of doing business;
(3) Training allowance from vocational and rehabilitative programs recognized by federal, state, or local governments, to the extent that they are not reimbursements;
(4) Volunteers in Service to America (VISTA) payments under 42 U.S.C. 4951 to 4960 shall be considered earned income unless specifically excluded in accordance with 7 C.F.R. 273.9(c)(10)(iii) [Section 3(5) of this administrative regulation];
(5) The earned or unearned income of an ineligible household member or nonhousehold member as described in 921 KAR 3:035, Section 5(3) and (4);
(6) Assistance payments from federal or federally-aided public assistance including:
(a) Supplemental security income or "SSI";
(b) Kentucky Transitional Assistance Program or "K-TAP" in accordance with 921 KAR 2:016;
(c) General assistance programs;
(d) Other assistance programs based on need, or
(e) Kinship care in accordance with 922 KAR 1:130;
(7) Annuities;
(8) Pensions;
(9) Retirement, veteran's, or disability benefits;
(10) Worker's or unemployment compensation;
(11) Strike pay;
(12) Old-age survivors or Social Security benefits;
(13) Except as excluded in Section 3(5) of this administrative regulation, foster care payments for a child or adult;
(14) Gross income derived from rental property, minus the cost of doing business. This income shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week;
(15) Wages earned by a household member that are garnished or diverted by an employer and paid to a third party for a household expense;
(16) Support or alimony payments made directly to the household from a nonhousehold member. This shall include any portion of a payment returned to the household by the cabinet;
(17) A portion of the following, that is not excludable as specified in Section 3(5) of this administrative regulation:
(a) Scholarship,
(b) Education grant;
(c) Fellowship;
(d) Deferred payment education loan,
VOLUME 32, NUMBER 1 – JULY 1, 2005

(e) Veteran's educational benefit; or
(f) Income received from a work study program which is not
   administered by the U.S. Commissioner of Education or the Bu-
   reau of Indian Affairs, in accordance with 7 U.S.C. 2014;

(18) A payment from:
   (a) A government sponsored program;
   (b) A dividend;
   (c) Interest, except for burial reserves as provided in Section
   3(22) of this administrative regulation, in accordance with Pub.
   L. 107-174;

(6) A royalty, and

(7) (ee) Similar direct money payments from a source that may
   be construed as a gain or benefit,
   (19) Money withdrawn [or a dividend that is or may be re-
   ceived] from a trust fund;

(20) The [that] amount of monthly income deemed to a spon-
   sored [of an alien's sponsor and the sponsor's spouse (if living with
   the sponsor) that has been deemed to be that of the] alien as es-
   tablished in 921 KAR 3:035, Section 5(11);

(1) The portion of means tested assistance monies:
   (a) From a:
     1. Federal welfare program;
     2. State welfare program; or
     3. Local welfare program; and

   (b) Withheld for the purpose of recouping an overpayment
      resulting from the household's intentional failure to comply with
      that program's requirements;

(22) Earnings of an individual who is participating in an on-the-
      job training program under 29 U.S.C. 2801 et seq. [1401] until
      the individual is under:
     (a) Nineteen (19) years of age; and
     (b) The parental control of another adult member; and

(23) An assistance payment for care of minor children;
   (a) Received from an outside source; and
   (b) Paid to one or more household members:
      1. From another household member; or
      2. On behalf of another household member. [Portions of Indian
         Per Capita payment made as defined in 25 U.S.C. 459, 4261, and
         1401 in excess of $2,000 per payment per individual, effective
         September 1, 1989]

Section 3. Income Exclusions. The following payments shall
   not be considered as income:
   (1) Money,
      (a) Withheld from an assistance payment;
      (b) From earned income;
      (c) From another income source; or
      (d) Received from another income source that is voluntarily or
          involuntarily returned to repay a prior overpayment received from
          that income source, except as defined in Section 2(21) of this ad-
          ministrative regulation;
   (2) Child support income shall be considered as follows:
      (a) A child support payment shall be excluded if:
          1. Received by a recipient of the K-TAP or Kinship Care Pro-
              gram; and
          2. It is [or were to be] transferred to the Division of Child Sup-
              port to maintain eligibility in K-TAP or Kinship Care Program; and
          (b) A portion of child support money returned to the household
              receiving K-TAP or Kinship Care Program benefits by the cabinet
              shall not be excluded;
   (3) A gain or benefit that is not in the form of money payable
directly to the household;
   (4) A money payment that is not legally obligated and otherwise
       payable directly to a household, but is paid to a third party for
       a household expense;
   (5) Income,
      (a) Received:
          1. In the certification period; and
          2. Too infrequently or irregularly to be reasonably anticipated; and
      (b) Not in excess of thirty (30) dollars per quarter;
   (6) Educational income:
      (a) Including
          1. A deferred payment educational loan on which repayment
              does not begin within sixty (60) days after receipt;
          2. A grant;
          3. A scholarship;
          4. A fellowship;
          5. A veteran's educational benefit;
          6. Income from a work study program administered by the U.S.
             Commissioner of Education or the Bureau of Indian Affairs, in ac-
             cordance with 7 U.S.C. 2014; and
          7. A similar form of income;
      (b) Awarded to a member of a household, as defined in 921
          KAR 3:010, Section 1(24), who is enrolled in one (1) of the follow-
          ing recognized institutions:
            1. Institution of postsecondary education;
            2. School for a disabled person;
            3. Vocational [Vocational] education program; or
            4. Program providing for completion of a secondary school
               diploma or its equivalent;
      (c) To the extent that it does not exceed the amount used for or
          made available as an allowance as determined by the:
           1. School;
           2. Institution;
           3. Program; or
           4. Grantor;
      (d) For payment of:
          1. Tuition;
          2. Transportation;
          3. Miscellaneous personal expense, other than room and
             board,
          4. An origination fee for an educational loan,
          5. An insurance premium for an educational loan; or
          6. Dependent care, except the costs that exceed the amount
             excludable from income shall be deducted as defined in Section 5
             of this administrative regulation;
      (e) For payment of mandatory fees relating to the course of
          study, including the rental or purchase of:
            1. Equipment,
            2. Materials;
            3. Books; and
            4. Supplies;
      (f) A loan, other than an educational loan on which payment is
          deferred, from a:
            (a) Private individual; or
            (b) Commercial institution;
        (g) A reimbursement for a past or future expense, other than
            normal living expenses;
   (9) Money received and used for the care and maintenance of
       a third-party beneficiary who is not a household member;
   (10) The earned income of a child who is:
        (a) A member of the household;
        (b) An elementary or secondary school student; and
        (c) Age seventeen (17) years or younger;
   (11) Money received in the form of a nonrecurring lump-sum
       payment,
   (12) The cost of producing self-employment income. If the cost
       of producing farm self-employment income exceeds the income
       derived from self-employment farming, the loss shall be offset
       against any other countable income in the household;
   (13) Income specifically excluded by 7 U.S.C. 2014 from con-
       sideration as income for the purpose of determining Food Stamp
       Program eligibility;
        (a) In accordance with any federal law, except 42 U.S.C. 601
            to 619, including a utility reimbursement made by:
            1. The Department of Housing and Urban Development; and
            2. Rural and Economic Community and Development; or
        (b) For the purpose of a one (1) time payment or allowance
            made as defined in a federal or state law for the costs of:
            1. Weatherization;
            2. Emergency repair; or
            3. Replacement of:
               a. An unsafe or inoperative furnace; or
               b. Other heating or cooling device; and
        (15) A cash donation based on need received from a nonprofit
            charitable organization, not to exceed $300 in a federal fiscal year
VOLUME 32, NUMBER 1 – JULY 1, 2005

quar-ter;

(16) A foster care payment for a foster child if the household requests that the child be excluded from the household in determining eligibility;

(17) Money received under 26 U.S.C. 3507 of the Internal Revenue code, as an advanced payment of earned income credit;

(18) Interest or dividend income, in accordance with 7 U.S.C. 2014;

(19) Additional wages received by a member of the military while deployed to a designated combat zone, in accordance with Pub L. 108-447;

(20) Veteran’s benefits provided to children with identified birth defects born to female Vietnam veterans, in accordance with 38 U.S.C. 1823;

(21) Income from AmeriCorps programs, except for Volunteers in Service to America, as specified in Section 2(4) of this administrative regulation, in accordance with 42 U.S.C. 12501 et seq. ;

(22) Income from a Youthbuild program, unless the income is from on-the-job training, as defined in Section 2 of this administrative regulation, in accordance with 29 U.S.C. 2931; and

(23) Income associated with the fulfillment of an approved Plan for Achieving Self-Support (PASS), in accordance with 42 U.S.C. 1392a(b)(4)(B)(iv). Up to $12,000 to Ableats and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for a hardship experienced during World War II;

(18) Money received under 26 U.S.C. 3507 of the Internal Revenue Code (advanced payment of earned income credit);

(19) An in-kind, per-capita payment made as defined in 26 U.S.C. 450, 1221 and 1401, as distribution from a judgment award and trust fund of $2,000 or less per individual per payment;

(20) An amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household as defined in 42 U.S.C. 1392a(b)(4)(B)(iv);

(21) An on-the-job training payment that is received as defined in 26 U.S.C. 1430 through 1432; and

(22) Interest accrued on burial reserves, in accordance with 7 U.S.C. 2014.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to a household whose income falls at or below the applicable standards as established by the Food and Nutrition Service in 7 C.F.R. 273 that are set forth below:

(1) A household that contains a member who is elderly or has a disability as defined in 921 KAR 3 010, Section 1(11) or (13), shall have its net income compared to 100 percent of the federal income poverty guidelines.

(2) A household in which a member receives or is authorized to receive cash, in-kind, or other benefits funded under temporary assistance to needy families, or "TANF" pursuant to 42 U.S.C. 601-699, shall be considered categorically eligible in accordance with 921 KAR 3 030, Section 6(4).

(3) A household in which all members are recipients of SSI shall be considered categorically eligible in accordance with 921 KAR 3 030, Section 6(3).

(4) Other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A monthly standard deduction per household, based on household size, as established in 7 U.S.C. 2014, that shall be periodically adjusted by the Food and Nutrition Service to reflect a change in the cost of living for a prior period of time as determined by the Food and Nutrition Service pursuant to 7 C.F.R. 273;

(2) Twenty (20) percent of gross earned income that is reported within ten (10) days of the date that the change of income becomes known to the household;

(3) A payment:

(a) For the actual cost for the care of:

1. A child; or

2. Other dependent;

(b) Not to exceed:

1. $200 per month per dependent child under age two (2); and

2. $175 per month for each other dependent; and

(c) Necessary for a household member to:

1. Seek, accept, or continue employment;

2. Attend training;

3. Pursue education preparatory to employment;

4. The cabinet shall use a homeless stabilization allowance of a shelter expense for a household in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses;

5. An allowable medical expense in excess of thirty-five (35) dollars per month incurred by a household member who meets the definition of being elderly or having a disability as defined in 921 KAR 3 010, Section 1(11) and (13):

(a) Including:

1. Medical and dental care;

2. Hospitalization or outpatient treatment and nursing care;

3. Medication and medical supplies;

4. A health insurance premium;

5. A hospitalization insurance premium;

6. Dentures, a hearing aid, eyeglasses, prosthetics; or

7. Similar medical expense; and

(b) Excluding special diet cost;

6. Actual child support payment made by a household member shall be allowed as a deduction if:

(a) The household member is legally obligated to pay child support; and

(b) Verification is provided showing a payment is actually being made

Section 6 Monthly Shelter Cost Deduction (1) The monthly shelter cost deduction shall be that amount in excess of fifty (50) percent of the household's income after allowable deductions have been made.

(2) The shelter deduction shall not exceed the current shelter maximum, except that a household shall not be subject to the maximum if a member is:

(a) Elderly; or

(b) Disabled.

(3) The excess shelter maximum shall be adjusted periodically by the Food and Nutrition Service to reflect change in the cost of living.

(4) Allowable monthly shelter expense shall include the following:

(a) Continuing charge for the shelter occupied by the household including:

1. Rent;

2. Mortgage;

3. Payment on mobile home loan;

4. Condominium and association fees;

5. Interest on a payment; and

6. Similar charge leading to ownership of the shelter;

(b) Property tax;

(c) State and local assessment;

(d) Insurance on the structure itself;

(e) The cost of:

1. Heating and cooking fuel;

2. Cooling;

3. Electricity;

4. Water and sewage;

5. Garbage and trash collection fee;

6. Telephone standard deduction; and

7. A fee charged by a utility provider for the initial installation of the utility;

(f) The shelter cost for the home if:

1. Temporarily unoccupied by the household because of:

(a) Employment or training away from home;

(b) Illness; or

(c) Abandonment caused by a natural disaster or casualty loss;

2. The current occupant is not claiming shelter cost for food stamp purpose; and

3. The home is not leased or rented during the absence of the
household; or
(g) A charge for the repair of the home if substantially dam-
aged or destroyed by fire, flood, or other natural disaster, except to
the extent the cost is reimbursed by:
1. A private or public relief agency;
2. Insurance; or
3. A similar source.
(5) The standard utility allowance shall be used to calculate
shelter cost for a household:
(a) Receiving Low Income Home Energy Assistance Program
benefits; or
(b) Incurring cost, separate from its rent or mortgage payment,
for:
1. Heating; or
2. Cooling (by air conditioning unit only).
(6) The standard utility allowance shall be adjusted periodic-
ally.
(7) If the household is not entitled to the utility standard or
homeless standard allowance, it shall be given the basic utility
allowance in accordance with 7 U.S.C. 2014, if the household is
billed for two (2) of the following:
(a) Electricity (nonheating and noncooling);
(b) Water or sewage;
(c) Garbage or trash;
(d) Cooking fuel, or
(e) Telephone service.
(8) The basic utility allowance shall be adjusted annually.
(9) A household whose only expense is for telephone service
shall be given a telephone standard.
(10) A household not entitled to a standard specified in sub-
section (7) or (9) of this section may use actual utility expense to
calculate shelter deduction.

Section 7. Resources. (1) Uniform national resource standards of
eligibility shall be utilized pursuant to 7 C.F.R. 273.8.
(2) Eligibility may be denied or terminated if the total value of a
household’s liquid and nonliquid resources, not exempt under Sec-
tion 8 of this administrative regulation exceed:
(a) $3000 for a household member:
1. With a disability as defined in 921 KAR 3 010, Section 1(11);
2. Sixty (60) years or older; or
(b) $2000 for any other household.
(3) A household that is categorically eligible in accordance with
921 KAR 3.030, Section 6 shall meet the food stamp resource
requirement.

Section 8. Exempt Resources. The following resources shall
not be considered in determining eligibility:
(1) All real estate, in accordance with 7 U.S.C. 2014;
(2) Household goods;
(3) Personal effects;
(4) A burial plot;
(5) The cash value of life insurance policies;
(6) Funds in an individual retirement account, pension, retire-
ment, or deferred compensation during the period of unavailability;
(7) A prepaid burial account, in accordance with 7 U.S.C. 2014;
(8) In accordance with 7 U.S.C. 2014 a licensed or unlicensed
vehicle;
(9) A recreational vehicle, in accordance with 7 U.S.C. 2014;
(10) A resource deemed to an alien from a sponsor or spouse
of a sponsor, in accordance with 7 U.S.C. 2014;
(11) Principal and accrued interest of an irrevocable trust dur-
ing a period of unavailability, in accordance with 7 U.S.C. 2014;
(12) A governmental payment that is designated for the resto-
ration of a home damaged in a disaster, if the household is subject
to legal sanction and, if funds are not used as intended;
(13) A resource, of which the cash value is not accessible to
the household;
(14) A resource that has been prorated as income;
(15) A resource that is excluded for food stamp purposes in
accordance with 7 U.S.C. 2014;
(16) Indian lands held jointly with the tribe, or land that can be
sold only with the approval of the Department of the Interior’s Bu-
reau of Indian Affairs;
(16) A resource that is excluded for food stamp purposes by
express provision of 7 U.S.C. 2014;
(17) Up to $12,000 to Aluets and $20,000 to an individual of
Japanese ancestry for payment made by the U.S. to compensate
for hardships experienced during World War II;
(18) Income that is withheld by the employer to pay a certain
expense directly to a third party as a vendor payment, to the extent
that the remainder of the withheld income is not accessible to the
household at the end of the year; and
(19) Indian per capita payment made as defined in 25
U.S.C. 459-1261, as distribution from a judgment award and trust
fund, of $2,000 or less per individual payment.
(20) A purchase of $2,500 or less that is made solely with an
Indian per capita payment after December 31, 1981 but prior to
January 12, 1983;
(21) The earned income tax credit income received by a
member of the household for a period of twelve (12) months from
receipt if the member was participating in the Food Stamp Pro-
gram:
(a) At the time the credit was received; and
(b) Continuously during the twelve (12) month period of exclu-
sion; and
(22) A resource that cannot be sold for a significant amount of
funds for the support of the household.

Section 9. Transfer of Resources. A household that has trans-
ferred a resource knowingly for the purpose of qualifying or at-
ttempting to qualify for food stamps shall be disqualified from par-
ticipation in the program for up to one (1) year from the date of
the discovery of the transfer.

Section 10. Failure to Comply with Other Programs. (1) Except
as provided in subsection (2) of this section, if the benefits of a
household are reduced under a federal, state, or local law relating
to a means-tested public assistance program for the failure of a
member of the household to perform an action required under the
law or program, for the duration of the reduction, the food stamp
allowance of the household shall be reduced by twenty-five (25)
percent.
(2) If the benefits of a household are reduced as defined in a
federal, state, or local law relating to a means-tested public assis-
tance program for the failure of a household member to perform a
work requirement, the individual shall be subject to the disqualifi-
cation procedure as defined in 921 KAR 3 042, Section 7.

JAMES W. HOLSINGER, Jr., M.D., Secretary
MIKE ROBINSON, Commissioner
MIKE BURNSIDE, Undersecretary
APPROVED BY AGENCY: June 8, 2005
FILED WITH LRC: June 13, 2005 at 4 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hear-
ing on this administrative regulation shall be held on July 21, 2005,
at 9 a.m. in the Cabinet for Health and Family Services Auditorium,
Health Services Building, 275 East Main Street, Frankfort, Ken-
ucky. Individuals interested in being heard at this hearing shall
notify this agency in writing by July 14, 2005, five working days prior
to the hearing, of their intent to attend. If no notification of intent
to attend the hearing is received by that date, the hearing may be
canceled. The hearing is open to the public. Any person who
wishes to be heard will be given an opportunity to comment on the
proposed administrative regulation. A transcript of the public hear-
ing 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 busi-
ness August 1, 2005. Send written notification of intent to be heard
at the public hearing or written comments to:
CONTACT PERSON: Jil Brown, Office of Legal Services, 275
East Main Street SW-B, Frankfort, Kentucky 40621, phone (502)
564-7905, fax (502) 564-7573.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shurley Eklkridge

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.
(b) The necessity of this administrative regulation: This administrative regulation is need to establish uniform standards of financial eligibility regarding the Food Stamp Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The cabinet has responsibility under 7 C.F.R. 271.4 to administer the Food Stamp Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this administrative regulation: This amendment will revise the category of excluded income to include interest income, dividends, combat pay, certain veteran's benefits, AmeriCorps income, and Youthbuild income other than from on-the-job training, to conform with federal regulations. The countable income category is revised to specify that payments received from outside agencies to assist a household member with paying another household member for attendant or child care are considered countable income. Additional types of income and resources that are obscure in Kentucky, but that are still addressed in the federal regulations, have been removed from this administration with this amendment.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order comply with federal regulations and specify the correct types of excluded and countable income.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with 7 C.F.R. 271.4 by establishing the financial eligibility requirements used by cabinet in the administration of the Food Stamp Program.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation sets the guidelines to be followed in determining financial eligibility for the Food Stamp Program.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: All Food Stamp Program applicants and recipients in the commonwealth will be affected by this administrative regulation. Currently, there are approximately 566,600 individuals in Kentucky participating in the Food Stamp Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment may allow more applicants to qualify for food stamp benefits by excluding several additional types of income, such as interest income, combat pay, and AmeriCorps income. Only a small percentage of recipients may lose benefits now that certain child care and attendant care assistance payments are considered countable income.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Food Stamp Program benefits are 100% federally funded. Kentucky's administrative costs of the program may increase by $2,250 due to the increased participation anticipated by this amendment.
(b) On a continuing basis: Refer to 5(a).
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Food Stamp Program benefits are 100% federally funded through the U.S. Department of Agriculture. The administrative costs of the Food Stamp Program are 50% federally funded. The other 50% comes from the General Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

- 168 -
FINANCE AND ADMINISTRATION CABINET  
Department of Revenue  
Office of Property Valuation  
(Repealer)  

103 KAR 7:021. Repeal of 103 KAR 7:040 and 103 KAR 7:050.  

STATUTORY AUTHORITY: KRS 131.130  
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to repeal administrative regulations 103 KAR 7:040 and 7:050, which regulate taxation of intangible property. With 2005 Ky. Acts ch. 168, sec. 58, the Kentucky GA amended KRS 132.203 to repeal the taxation of some intangible property.  

Section 1. The following administrative regulations are hereby repealed:  
(1) 103 KAR 7:040. Intangible property right; annuities; and  
(2) 103 KAR 7:050. Trusts as intangible property.  

Section 2. The repeal of the administrative regulations in Section 1 will be effective on January 1, 2006.  

ROBBIE RUDOLPH, Jr., Secretary  
APPROVED BY AGENCY: June 9, 2005  
FILED WITH LRC: June 13, 2005 at 1 p.m.  
PUBLIC HEARING AND COMMENT PERIOD. A public hearing on this administrative regulation shall be held on July 29, 2005 at 10 a.m. at the Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed regulation to the contact person.  
CONTACT PERSON: Edward A. Mattingly, Director, Division of Legislative Services, Department of Revenue, 200 Fair Oaks Lane, Station 8, Frankfort, Kentucky 40601, phone (502) 564-6843, fax (502) 564-9565.  

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT  
Contact person: Edward A. Mattingly, (502) 564-6843  
(1) Provide a brief summary of:  
(a) What this administrative regulation does: HB 272, the tax modernization bill enacted by the GA, repealed a number of the taxes on intangible personal property. This regulation repeals previous regulations which related to the now repealed intangible property tax, effective January 1, 2008.  
(b) The necessity of this administrative regulation: This administrative regulation is necessary because the regulations it repeals no longer correspond to a statute in force on January 1, 2006.  
(c) How this administrative regulation conforms to the content of the authorizing statutes: This repealer regulation is a direct response to statutes that have also been repealed, effective January 1, 2006.  
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation takes regulatory "dead wood" out of the administrative regulations in force.  
(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 regulation.  
(b) The necessity of the amendment to this administrative regulation: This is a new regulation.  
(c) How the amendment conforms to the content of the authorizing statutes: This is a new regulation.  
(d) How the amendment will assist in the effective administration of the statutes: This is a new regulation.  
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation would affect any Kentucky taxpayer who currently pays a property tax on intangible personal property, as well as the Department of Revenue, which administers these taxes.  
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This regulation will repeal regulations that are now unnecessary because of changes in the taxing statutes.  
(5) Provide an estimate of how much it will cost to implement this administrative regulation:  
(a) Initially: The Department of Revenue Cabinet will not incur additional costs as the result of this regulation.  
(b) On a continuing basis: The Department of Revenue will not incur additional costs as the result of this regulation.  
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue 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 in fees or funding will be necessary to implement this administrative regulation.  
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.  
(9) TIERING: Is tiering applied? Tiering was not applied. Tiering was not used as the requirements of this regulation apply to the repeal of a tax affecting all taxpayers. In effect, there is nothing to tier.  

FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary  
Office of the Controller  
(Repealer)  


RELATES TO: KRS 29A.160  
STATUTORY AUTHORITY: KRS 29A.180  
NECESSITY, FUNCTION, AND CONFORMITY. KRS 29A.180 provides for the reimbursement of law enforcement officers for certain jury and juror expenses in accordance with administrative regulations promulgated by the Finance and Administration Cabinet. The statute previously authorized the former Department of Local Government to promulgate this regulation. A new administrative regulation is being promulgated under the County Fee Systems Branch in the Division of Local Government Services, Office of the Controller, Finance and Administration Cabinet to continue this reimbursement process.  

Section 1. 109 KAR 11:020, Reimbursement to law enforcement officers for certain expenses, is hereby repealed.  

R. B. Rudolph, Jr., Secretary  
APPROVED BY AGENCY: June 9, 2005  
FILED WITH LRC: June 13, 2005 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 26, 2005, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by July 19, 2005, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6650, fax (502) 564-9875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 109 KAR 11:020.
(b) The necessity of this administrative regulation: This regulation is needed in order to repeal this administrative regulation which will be promulgated under the correct chapter of the Kentucky Administrative Regulations due to reorganization of the Finance and Administration Cabinet.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 42.0201 authorizes the state controller to maintain responsibility for the state government’s duties and functions relating to the county fee system for local entities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment repeals an administrative regulation that is in the incorrect chapter of the KAR following reorganization of the Finance and Administration Cabinet.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the Finance and Administration Cabinet and county sheriffs, city police, city marshals and/or their deputies.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The repealer will have little or no impact on the current practices of the above groups.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No funding necessary.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(9) TIERING: Is tiering applied? No, this administrative regulation merely repeals an administrative regulation which will be promulgated in another chapter of the KAR.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(New Administrative Regulation)

200 KAR 38:060. Reimbursement to law enforcement officers for certain expenses.

RELATES TO: KRS 29A.180
STATUTORY AUTHORITY: KRS 29A.180
NECESSITY, FUNCTION, AND CONFORMITY: KRS 29A.180 requires the Finance and Administration Cabinet to promulgate administrative regulations concerning the reimbursement of law enforcement officers for certain jury and juror expenses. This administrative regulation establishes the method of reimbursing law enforcement officers for expenses incurred for sequestered jurors, for transporting jurors or other authorized persons to views of the scene and for providing specialized security personnel, equipment or services to the court.

Section 1. Definitions
(1) "Branch" means the County Fee Systems Branch in the Division of Local Government Services.
(2) "Cabinet" means the Finance and Administration Cabinet.
(3) "Officer" means the sheriff, city police, or city marshal incurring expenses pursuant to KRS 29A.180.

Section 2. For expenses incurred for sequestered grand or petit jurors, as authorized by KRS 29A.180(1), each officer, upon presenting the branch an order of the court requiring sequestration and an invoice for the expenses, shall be reimbursed for:
(1) The actual cost of meals, tips and delivery service for no more than fourteen (14) jurors and no more than two (2) officers. Meals for additional jurors and officers may be reimbursed upon presenting the branch with an order of the court documenting the need. Sales tax incurred shall not be reimbursed.
(2) The actual cost of housing for jurors and appropriate officers.
(3) Any other expense incurred in service to sequestered jurors.

Section 3. For expenses incurred in transporting jurors and other authorized persons as authorized by KRS 29A.180(2), each officer, upon presenting the branch an order of the court requiring the transport, shall be reimbursed for each vehicle used at the rate set forth in KRS 64.070 for transporting a prisoner to the penitentiary.

Section 4. For expenses incurred in providing specialized security personnel, equipment or services as authorized by KRS 29A.180(3), each officer, upon presenting the branch an order of the court requiring the personnel, equipment or services, and a copy of any consenting correspondence from the Chief Justice, shall be reimbursed for:
(1) Specialized security personnel at the rate authorized by KRS 64.052 for court attendance.
(2) Equipment and services requested by the judge at a reasonable rate to be fixed by the judge and entered upon the order book of the court.

R. B. Rudolph, Jr., Secretary
APPROVED BY AGENCY: June 9, 2005
FILED WITH LJC: June 13, 2005 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 26, 2005, at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five workdays.
prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by July 19, 2005, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6685, fax (502) 564-6875.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ed Ross

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation promulgates an administrative regulation under the Office of the Secretary, previously promulgated under the Governor's Office for Local Development, that provides for the method of reimbursing law enforcement officers for expenses incurred for sequestered jurors, for transporting jurors or other authorized persons to and from the place of trial, for providing specialized security personnel, equipment or services to the court.
(b) The necessity of this administrative regulation: KRS 29A.180 provides that officers responsible for the needs of jurors, transportation to view scenes, and security personnel, equipment and services shall be reimbursed in accordance with administrative regulations promulgated by the Finance and Administration Cabinet. This regulation promulgates the reimbursement requirements under the Office of the State Controller.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifies how the Finance and Administration Cabinet will implement the reimbursement procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation specifies the requirements to be followed by a law enforcement officer requesting reimbursement for the costs of provisions for needs of jurors, transportation, security personnel, equipment and 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: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statute: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to the Finance and Administration Cabinet, county sheriffs, city police, city marshals and/or their deputies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There should be no additional impact on the cabinet or law enforcement officers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional administrative costs will be required.
(b) On a continuing basis: No additional administrative costs will be required.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? No additional funding will be required to continue this reimbursement 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

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

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

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary
Office of the Controller
(New Administrative Regulation)

200 KAR 38:070. Internal controls and pre-audit.

RELATES TO: KRS 42.0201, 45.121, 45.240

STATUTORY AUTHORITY: KRS 45.237

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45.237 requires the Finance and Administration Cabinet develop, for the executive branch, a system of internal controls and pre-audit policies and procedures applicable to disbursement transactions for the purpose of prevention and detection of errors or fraud and abuse prior to the issuance of a check or warrant. This administrative regulation requires agencies to draft and submit internal control plans to the Finance and Administration Cabinet. Agencies will also be required to provide information related to internal controls and pre-audit procedures as requested by the Office of the Controller, per the delegation agreement with each agency. Based on agency internal control plans and activities reported, the Finance and Administration Cabinet shall assist agencies, when appropriate, in the implementation of policies and procedures to reduce improper and unnecessary payments.

Section 1. Definitions. (1) "Agency" is defined by KRS 12.010.

(2) "Agency head" means the cabinet secretary or executive and administrative head of an agency that does not have a secretary at the top of its organizational structure.

(3) "Control environment" means the atmosphere or organizational culture in which state employees conduct activities and carry out their jobs. It encompasses the organizational structure, management philosophy and operating styles, integrity and ethical values, commitment to competence, and human resource policies and practices.

(4) "Fiscal officer" means the employee appointed by the agency head, in accordance with FAP 120-07-00, with responsibilities including establishing and maintaining a proper internal control structure, establishing and maintaining the agency's financial and procurement systems, processing and authorizing transactions on behalf of the agency, maintaining the agency's accounts for the state's accounting system, providing assurances that agency financial reports accurately reflect underlying activity, conducting fiscal operations under Generally Accepted Accounting Principles (GAAP), and acting as a single point of contact with the Office of the Controller.

(5) "Internal control" means a procedure or activity implemented to provide reasonable assurance that the agency achieves effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws, regulations, policies, and procedures.

(6) "Monitor" means quantifiable and qualitative assessment of the effectiveness and efficiency of the system of internal controls and pre-audit policies and procedures.

(7) "Risk assessment" means the identification and analysis of risks to the achievement of operations, financial reporting, and compliance objectives, forming the basis for determining how those risks should be managed.

Section 2. Fiscal Officer to Develop Internal Control Plan. (1) The agency head shall perform the responsibilities of fiscal officer or delegate the responsibilities to an employee with adequate skills to perform the job duties. The fiscal officer shall be specified in the delegation agreement between the agency and the Office of the Controller.

(2) Each fiscal officer shall develop and document internal
controls to both prevent and detect abuse, unintentional errors, and the fraudulent disbursement of funds or use of state assets. In addition, the fiscal officer shall work with agency personnel to implement the internal controls and monitor their effectiveness.

(3) An internal control plan shall include the following:

(a) Organizational structure and alignment of job duties that provide for the appropriate segregation of duties for the proper safeguarding of agency assets to prevent one (1) individual from controlling or processing a transaction from beginning to end;

(b) Limited number of agency personnel authorized to access agency assets and records in the performance of their assigned duties;

(c) Procedure that provides for the internal review of all transactions processed by the agency, as required by the agency's Pre-audit Delegation Agreement with the Office of the Controller and FAP 120-13-00. The internal review shall include, but is not limited to, the following:

1. Authenticity of transactions or documents including vendor invoices, claims for refund amounts previously paid or withheld, and other documents;

2. Legality and propriety of transactions;

3. Authorized approvals of transactions;

4. Review of transactions for appropriate accounting codes and accuracy;

5. Review for compliance with GAAP;

(d) Authorization and recordkeeping procedures, including document retention in accordance with agency established retention schedules and the General Schedule for state agencies, FAP 111-28-00, and FAP 120-21-00;

(e) Reconciliation of agency accounts on a timely basis;

(f) Detailed procedures to be followed in the performance of job duties and functions, to emphasize duties that comprise the overall framework of accountability and internal controls, and to help assure the continuation of agency operations in the event of staffing changes;

(g) Procedures for safeguarding agency assets;

(h) Assessment of the control environment, risks, impact of abuse, unintentional errors, and potential fraud for the following:

1. Receipts;

2. Disbursements;

3. Procurement practices;

4. Procurement card use;

5. Fixed assets;

6. Pre-audit of agency transactions;

7. Routing of MARS documents;

8. Document retention;

9. Grant and program administration;

10. Compliance and noncompliance with statutes, administrative regulations, policies, and procedures; and

11. Accounts Receivables;

12. Journal Vouchers;

13. Adjustment transactions;

14. Physical security; and

15. Other relevant agency activities.

(i) Cost-effective control activities to address identified risks that may result in improper or unnecessary payments;

(j) Written communication regarding agency internal controls to employees.

(k) System of monitoring compliance with internal control and pre-audit procedures.

(l) Procedures for employees to report violations of internal control and pre-audit procedures requested by the Office of the Controller in the delegation agreement with the agency.

Section 3. Agency Reports to the Finance and Administration Cabinet. (1) Each fiscal officer shall submit information about internal controls and pre-audit procedures requested by the Office of the Controller in the delegation agreement with the agency.

(2) Upon request, each fiscal officer shall complete and submit to the Office of the Controller information related to the system of internal control and pre-audit policies and procedures in place to prevent and detect errors, waste, abuse, and fraud.

(3) Each fiscal officer shall report amounts paid to a vendor, provider, or recipient due to errors, fraud, or abuse in the annual financial closing package to the Office of the Controller.

(4) In compliance with 200 KAR 5:302, Section 2(h), each agency that requests or obtains a small purchase delegation above the limits established in KRS 45A.100 shall submit to the secretary of the Finance and Administration Cabinet every record of control weakness or noncompliance, related to procurement practices, issued to the agency by the Auditor of Public Accounts, internal auditors, or the Finance and Administration Cabinet's Office of Policy and Audit, for each of the past two (2) fiscal years, the agency's response to the finding, and any corrective measure taken.

(5) Financial or administrative abuse or fraud discovered by the agency shall be reported to the Office of the Controller as soon as practicable. After the appropriate agency authorities and state or federal officials have investigated the fraud or abuse, the agency shall submit an analysis of the internal control weakness that allowed the fraud or abuse to occur to the Office of the Controller. The agency shall also submit the internal controls that have been implemented by the agency to correct the weakness.

Section 4. Additional Internal Controls or Pre-Audit Procedures. (1) The Finance and Administration Cabinet may require an agency to implement additional internal controls or pre-audit procedures necessary to correct a control weakness or to meet the unique needs of the agency.

(2) When applicable, the Office of the Controller shall perform additional review to ensure that the internal controls or pre-audit procedures have been implemented, as required.

ROBERT B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: June 13, 2005
FILED WITH LRC: June 14, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on July 27, 2005, at 10 a.m., in Room 356 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing at least 5 working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by July 20, 2005, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 through August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Angela C. Robinson, Assistant General Counsel, Finance and Administration Cabinet, Office of Legal Services for Finance and Technology, Room 374 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-6660, fax (502) 564-9875

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Angela C. Robinson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires agencies to draft and submit internal control plans to the Finance and Administration Cabinet. Based on agency reports and activities, the Finance and Administration Cabinet will assist agencies in the implementation of policies and procedures to reduce improper and unnecessary payments.

(b) The necessity of this administrative regulation: KRS 45.237 requires the Finance and Administration Cabinet to develop, for the executive branch, a system of internal controls and pre-audit policies and procedures applicable to disbursement transactions for the purpose of prevention and detection of errors or fraud and abuse prior to the issuance of a check or warrant.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation requires each agency to consider the unique aspects of projects and pro-
grams that it administers. Based on this examination and information reported, the Finance and Administration Cabinet will work with agencies to ensure proper internal controls and pre-audit procedures are in place.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation specifies that the fiscal officer must develop an agency plan for internal controls, provides the minimum criteria for the plan, and lists reports that must be submitted.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all executive branch cabinets and agencies.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The executive branch cabinets and agencies are required by Finance and Administration to submit financial statements (FAPs) or financial appendices (FAPs) incorporated by reference in 200 KAR 5 021 to appoint a fiscal officer, pre-audit transactions and establish internal controls. This administrative regulation provides additional detail about what is expected from agencies and reporting requirements.

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

(a) Initially: The cost of staff hours for each cabinet or agency will depend upon detail and applicability of existing internal controls.

(b) On a continuing basis: Administrative costs should be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding will be required.

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

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

(9) TIERING: If starting applied? No, this regulation applies equally to all executive branch cabinets and agencies.

GENERAL GOVERNMENT CABINET
Board of Licensure for Occupational Therapy
(New Administrative Regulation)

201 KAR 28:190. Occupational therapy low-vision and visual-therapy services.

RELATES TO: KRS 319A.090(3)
STATUTORY AUTHORITY: KRS 319A.070(3), 319A.090(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.090(3) requires the board to promulgate administrative regulations related to the provision of occupational therapy low-vision and visual-therapy services. This administrative regulation sets forth the requirements for an occupational therapist to provide occupational therapy low-vision and visual-therapy services as authorized by KRS 319A.090(3).

Section 1. Definitions. (1) "Independent diagnostic evaluation" means the use of measurement instruments, devices and procedures or administering and interpreting of specialized-vision devices that are utilized to differentiate signs and symptoms, discover or identify a diseased or limiting visual condition. These evaluations pertain to visual functioning of eyesight, eye health, eye testing and eye motility or the determination of need for glasses, contact lenses, medical treatment or surgery.

(2) "Low-vision services" means occupational therapy services designed for the purpose of maximizing the use of residual vision in order to maintain or restore function in daily life roles and activities. Low-vision services includes:

(a) Occupational profiling, analysis of occupational performance, and intervention planning that focuses on adapting or altering environments and processes and the implementation of the intervention plan; and

(b) Training in the use of assistive technology for the purpose of improving performance skills and performance abilities in basic and instrumental activities of daily living, work or productive activities, play, and leisure.

(3) "Visual-therapy services" means occupational therapy services designed for the purpose of maximizing visual perceptual components of performance in order to restore or maintain daily life roles and activities.

(4) "Testing and prescription of optical, electronic or assistive technology low-vision devices" means the evaluation, assessment and prescription of devices for achieving the best visual correction and the prescription of low-vision devices that allow an individual with low vision to perform essential tasks, but does not include the training and instruction in the use of nonprescription assistive technology devices.

(5) "Visually related rehabilitative treatment plan" means a comprehensive vision plan of care for the rehabilitation and treatment of the visually-impaired or legally-blind individual which is developed by the optometrist, ophthalmologist, or physician after the evaluation and diagnosis of the individual client and which includes a general description of the low-vision services and the visual-therapy services that are to be provided by the OTL. A visually-related rehabilitative treatment plan is periodically reviewed by the optometrist, ophthalmologist, or physician.

(6) "Clinical treatment plan" means the visually-related rehabilitative treatment plan.


(1) An OTL shall not develop a visually-related rehabilitation plan, but an OTL may provide low-vision or visual-therapy services to a client as prescribed in writing by an optometrist, ophthalmologist, or physician who has personally examined and evaluated the client for low vision rehabilitation services and who has referred the client to the OTL.

(2) The low-vision or visual-therapy services which an OTL provides may include:

(a) Adapting environments and processes; and

(b) Training in the use of assistive technology for the purpose of improving performance skills and performance abilities in basic and instrumental activities of daily living, work or productive activities and play and leisure.

(c) Low-vision and visual-therapy services shall not include independent diagnostic vision evaluations or the development of a comprehensive vision plan for the rehabilitation and treatment for individuals with visual impairments.

(3) An OTL who is providing low-vision services or visual-therapy services under the direct supervision of an optometrist, ophthalmologist, or physician shall ensure that:

(a) The optometrist, ophthalmologist, or physician is always available in the OTL's place of employment or place where the services are offered to a client; or

(b) The optometrist, ophthalmologist, or physician is available to the OTL but not necessarily within the individual's place of employment or place where the services are offered to a client if all of the following conditions are met:

1. A client shall be accepted for treatment only on the order of an optometrist, ophthalmologist, or physician who has the sole authority to develop a visually related rehabilitative treatment plan for the client;

2. A client shall be seen by an optometrist, ophthalmologist, or physician at least once every thirty (30) days unless another time is justified and documented by the optometrist, ophthalmologist, or physician in the client's record;
VOLUME 32, NUMBER 1 – JULY 1, 2005

3. For each client there shall be a written occupational profile, an analysis of occupational performance, and an intervention plan which is developed by the OT/L in consultation with the optometrist, ophthalmologist, or physician making the referral; and

The intervention plan shall be reviewed by the referring optometrist, ophthalmologist, or physician once every thirty (30) days unless another time is justified and documented by the optometrist, ophthalmologist, or physician in the client’s record; and

5. The optometrist, ophthalmologist, or physician shall be promptly notified of any changes in the client’s condition.

A. An OT/L who has reason to believe that a client may require independent diagnostic evaluation shall advise the client to return to the referring optometrist, ophthalmologist, or physician and further communicate this information to the optometrist, ophthalmologist, or physician.

The OT/L who provides low-vision or visual-therapy services shall not deviate from the referral or written evaluation and clinical treatment plan from the optometrist, ophthalmologist, or physician without consultation, approval from the individual who made the initial referral, and documentation of the same.

The OT/L shall notify the referring optometrist, ophthalmologist, or physician of the occupational therapy intervention goals and the client’s outcome from occupational therapy services.

A. An OT/L who provides school-based occupational therapy services may perform tasks as developed, reviewed, and revised for the student from birth to age twenty-one (21) in accordance with 707 KAR 1:320 or First Steps intervention under KRS 200.654 to 200.670. If there is some indication that a child may have visual impairments, the OT/L shall make a referral to an optometrist, ophthalmologist, or physician.

KELLY NASH, Chairperson
APPROVED BY AGENCY: May 19, 2005
FILED WITH LRC: June 10, 2005 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 29, 2005, at 10 a.m., at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 22, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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. Written comments shall be accepted until August 1, 2005. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: John Parnsh, Executive Director, Kentucky Board of Licensure for Occupational Therapy, 911 Leawood Drive, Frankfort, Kentucky 40602, phone (502) 564-4233, fax (502) 564-4818.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: James J. Grawe
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation sets forth the requirements for an occupational therapist to provide occupational therapy low-vision and visual-therapy services as authorized by KRS 319A.090(3).

(b) The necessity of this administrative regulation: KRS 319A.090(3) requires the board to promulgate regulations related to the provision of occupational therapy low-vision and visual-therapy services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 319A.090(3) authorizes the board to promulgate administrative regulations related to the provision of occupational therapy low-vision and visual-therapy services. The statute allows occupational therapists to provide low-vision or visual-therapy services in accordance with a written evaluation and clinical treatment plan from an optometrist, ophthalmologist, or physician. This administrative regulation has been prepared in collaboration with the Board of Optometric Examiners to regulate the provision of low-vision or visual-therapy services by occupational therapists as set forth in KRS 319A.090(3).

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation sets out the guidelines for the administering of low-vision or visual-therapy services by occupational therapists which will be enforced by the board.

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

(b) The necessity of the amendment to this administrative regulation: KRS Chapter 319A provides that a license may be placed in inactive status by the licensee. 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 board licenses approximately 1,700 occupational therapists in the commonwealth.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The licensees who provide low-vision or visual-therapy services will be required to comply with the standards set out in this administrative regulation.

(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no costs anticipated in the implementation of this administrative regulation.

(b) On a continuing basis: There are no costs anticipated on a continuing basis involved in the implementation of this administrative regulation.

(6) The source of funding for the implementation and enforcement of this administrative regulation: Costs for enforcing this amendment will be funded by licensure fees paid by licensees.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate that an increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? No. This administrative regulation sets the requirements for providing low-vision and visual-therapy services that must be met by all licensed occupational therapists.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(New Administrative Regulation)

501 KAR 8:240. Home incarceration using an approved monitoring device.

RELATES TO: KRS Chapters 196, 197, 439, 532 
STATUTORY AUTHORITY: KRS 196 035, 197 020, 439 346, 
439.348, 439 470, 532 260 
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196 035, 
197 020, and 532 260 authorize the Justice and Public Safety 
Cabinet and Department of Corrections to promulgate administrative 
regulations concerning inmate release to home incarceration 
using an approved monitoring device. The policies and procedures 
related to home incarceration and monitoring are incorporated by 
reference. This administrative regulation establishes the policies 
and procedures for the inmate release to home incarceration 
and monitoring and management of offenders on supervision by the
Division of Probation and Parole.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device June 1, 2005" are incorporated by reference. These policies and procedures include:

25.12 Home Incarceration and Monitoring of Inmates 27-15-02 Curfew and Monitoring

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, (502) 584-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN D. REESE, Commissioner
APPROVED BY AGENCY: May 20, 2005
FILED WITH LRC: June 1, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on July 21, 2005 at 9 a.m. at the Office of Legal Services for the Justice and Public Safety Cabinet, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person:

CONTACT PERSON Amy V. Barker, Justice and Public Safety Cabinet, Office of Legal Services, P.O. Box 2400, Frankfort, Kentucky 40602-2400, phone (502) 584-2024, fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy V. Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Department of Corrections' early release of inmates to home incarceration and monitoring and probation and parole supervision with electronic monitoring.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035, 197.020, and 532.260.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides the regulations required by KRS 532.260 to govern the review and approval of inmates for early release to home incarceration and monitoring and establishes the parameters of probation and parole supervision with electronic monitoring pursuant to KRS 439.470.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides direction to the review and approval process and in establishing how the requirements of the statute will be met for this type of early release. It provides the parameters of probation and parole supervision with electronic monitoring pursuant to KRS 439.470.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections' approximately 3,700 employees and 305 inmates incarcerated in DOC institutions and Community Service Centers. Approximately 212 additional inmates on controlled intake status could potentially be affected. An unknown number of the approximately 30,400 offenders under the supervision of the Division of Probation and Parole.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or, by the change if it is an amendment: The Department of Corrections' institutional and probation and parole staff will be impacted by the changes in the requirements of their jobs. This regulation will require program staff to review inmates for eligibility. Administrative staff will enroll eligible offenders in the monitoring service, P&P staff will see an increase in reviewing home placements, changes in offenders' schedule, and monitoring.

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

(a) Initially: $511,000, but this amount may be reduced by inmates and offenders who have the ability to pay the monitoring fees

(b) On a continuing basis: The amount will continue to increase by an increase in the net number of inmates and offenders placed on monitoring.

(5) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Funds appropriated within the budget.

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

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

(9) TIERING: Is tiering applied? No, tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
OFFICE OF WORKERS' CLAIMS
(Repeater)


RELATES TO: KRS 342.0011(7), 342.340, 342.345, 342.347, 342.350

STATUTORY AUTHORITY: KRS 342.260(1), 342.340, 342.345, 342.350

NECESSITY, FUNCTION, AND CONFORMITY: Ky Acts ch. 7 transferred the regulatory authority over workers' compensation self-insurance groups to the Office of Insurance from the Office of Workers' Claims. Therefore, the Office of Workers' Claims has no regulatory authority over self-insurance groups and should have this administrative regulation repealed.

Section 1. 803 KAR 25:026, Group Self-Insurers, is hereby repealed.

WILLIAM P. EMRICK, Executive Director
APPROVED BY AGENCY: June 14, 2005
FILED WITH LRC: June 15, 2005 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 22, 2005, at 10 a.m. ET at the offices of the Office of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 15, 2005, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to
attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, General Counsel Office of Worker's Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-0681, fax (502) 564-0681.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carla H. Montgomery

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals 803 KAR 25.025, Group Self Insurers.

(b) The necessity of this administrative regulation: In Ky Acts ch. 7, the regulatory authority over workers' compensation self-insurance groups was transferred to the Office of Insurance. The Office of Workers' Claims must repeal its administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By repealing the administrative regulation, our agency will be in compliance with the statutes governing workers' compensation self-insurance groups.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In the past, the Office of Workers' Claims had regulatory authority over workers' compensation self-insurance groups. Now that regulatory authority is with the Office of Insurance, the administrative regulation is not necessary.

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

(a) How the amendment will change this existing administrative regulation: No amendment.

(b) The necessity of the amendment to this administrative regulation: No amendment.

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All workers' compensation self-insurance groups were affected by the statutory change found in Ky. Acts ch. 7. This repeal is simply following statutory authority.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Already impacted by statutory change. This administrative regulation cannot be enforced

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

(a) Initially: No cost.

(b) On a continuing basis: Same as (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding needed.

(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.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The regulation is being repealed.
(a) Meet the requirements of 806 KAR 14:121; and 
(b) List the state-mandated benefits excluded in whole or in part from coverage under the basic health benefit plan.

Section 3. Benefits mandated to be included in a health benefit plan that may be included in whole or in part in a basic health benefit plan include:

(1) Coverage of amino acid modified preparations and low-protein modified food products for the treatment of inherited metabolic diseases as provided for in KRS 304.17A-139(4); 
(2) Coverage of health care treatment or services rendered by an ambulatory surgical center as provided for in KRS 304.17-317, 304.18-035, and 304.32-156; 
(3) Coverage of the services rendered by a podiatrist as provided for in KRS 304.17-305(3) and 304.18-095(3); 
(4) Coverage of dental services provided by a physician as provided for in KRS 304.17-315 and 304.18-097; 
(5) Coverage of the treatment of temporomandibular joint disorders, craniofacial joint disorders, and craniofacial jaw disorders as provided for in KRS 304.17-319, 304.18-0365, 304.32-1585, and 304.38-1937; 
(6) Coverage of mammography screening as provided for in KRS 304.17-316, 304.18-098, 304.32-1591, and 304.38-1935; 
(7) Coverage of the treatment of breast cancer by high-dose chemotherapy with autologous bone marrow transplantation or stem cell transplantation as provided for in KRS 304.17-3165, 304.18-0365, 304.32-1591, and 304.38-1935; 
(8) Coverage of services provided by licensed psychologists and licensed clinical social workers as provided for in KRS 304.17-3155, 304.18-0365, 304.32-166, and 304.38-1933; 
(9) Coverage of surgical first assisting services of a: 
(a) Registered nurse first assistant as provided for in KRS 304 17A-146; 
(b) Certified surgical assistant as provided for in KRS 304.17A-147; and 
(c) Physician assistant as provided for in KRS 304 17A-1473; 
(10) Coverage of the treatment of human immunodeficiency virus infections as provided for in KRS 304.12-013(5); 
(11) Coverage of cochlear implants as provided for in KRS 304.17A-131; 
(12) Coverage of the treatment of autism in children as provided for in KRS 304.17A-143; 
(13) Coverage of telehealth services as provided in KRS 304.17A-138; 
(14) Coverage of anesthesia and services in connection with dental procedures as provided for in KRS 304.17A-149; 
(15) Coverage of hearing aids and related services as provided for in KRS 304.17A-132; 
(16) Coverage of nursing care for well newly born children as provided for in KRS 304.17-185, 304.18-033, 304.32-154, and 304.38-198; 
(17) Coverage of the diagnosis and treatment of endometriosis and endometritis as provided for in KRS 304.17-3163(1)(b), 304.18-0883(1)(b), 304.32-1593(1)(b), and 304.38-1934(1)(b); and 
(18) Coverage of bone density screening as provided for in KRS 304.17-3163(1)(c), 304.18-0891(1)(c), and 304.38-1934(1)(c).

Section 4. Basic Health Benefit Plan Requirements. (1) Except for the provisions relating to state mandated health benefits established under 2005 Ky. Acts ch. 144, sec. 2, a basic health benefit plan:

(a) Shall comply with the applicable requirements of a health benefit plan as established under Subtitles 12, 14, 17A, 18, 32, and 38 of KRS Chapter 304 and 806 KAR Chapter 12, 14, 17, 18, 32, and 38; and 
(b) May include one (1) or more of the benefits listed in Section 3 of this administrative regulation.

(2) A basic health benefit plan shall include benefits mandated under federal law as required under 2005 Ky. Acts ch. 144, sec. 2(3), including benefits for the following:

(a) Women's health and cancer pursuant to:
1. 42 U.S.C. 300gg-6, for a group basic health benefit plan; and 
2. 42 U.S.C. 300gg-52, for an individual basic health benefit plan, 
(b) Parity in the application of limits to mental health benefits pursuant to 42 U.S.C. 300gg-5 for a group basic health benefit plan; and 
(c) Newborns' and mothers' health pursuant to:
1. 42 U.S.C. 300gg-4, for a basic health benefit plan issued to a group and association; and
2. 42 U.S.C. 300gg-51, for a basic health benefit plan issued to an individual.

(3) A basic health benefit plan shall be marketed, distributed, and issued by an insurer in the same manner as a health benefit plan.

Section 5. Annual Reporting Requirements. In addition to the reporting requirements established under KRS 304.17A-330, an insurer offering a basic health benefit plan shall report to the Office of Insurance annually by April 1, on the form HIPMC-BHP-1, the following information specific to a basic health benefit plan:

(1) Total premium by product type and market segment; 
(2) Total enrollment by product type, market segment, and county; and 
(3) Total number of individuals not covered under health insurance for a period of at least one (1) year prior to coverage under a basic health benefit plan.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office’s internet web site at: http://doi.prp.ky.gov.

LAJJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Acting Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: May 5, 2005
FILED WITH LRC: May 13, 2005 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 25, at 9 a.m., (ET) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 18, 2005, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 August 1, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation details requirements established for basic health benefit plans,
(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the requirements of 2005 RS HB 278, Section 2, and provide clear direction to insurers filing forms and rates for basic health benefit plans.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2.110(1) provides that the executive director may promulgate administrative regulations nec-
essary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2005 RS HB 278, Section 2 authorizes insurers to offer 1 or more basic health benefits plans in Kentucky. This administrative regulation details the requirements of a basic health benefit plan.

(2) If this administrative regulation currently assists or will assist in the effective administration of the statutes: As this emergency administrative regulation will clarify in detail the statutory requirements relating to basic health plans, it will provide clear direction to insurers filing forms and rates for basic health benefit plans.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation details statutory requirements for basic health benefit plans. By law, a basic health benefit plan may be issued in the individual, small group, and excess markets. The regulation also establishes a basic health benefit plan for small group employers and employers with 50 employees or less. Under this regulation, employer organizations that currently uninsured or have difficulty maintaining current health insurance coverage must establish an "affordable" coverage.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Basic health benefit plans are type of health benefit plan. The plans may exclude any or all state-mandated benefits, excluding a designated few. It is believed basic health benefit plans will provide individuals, small group employers and employer organizations that currently uninsured or have difficulty maintaining current health insurance coverage with more "affordable" coverage.

(a) Initially: The Office of Insurance will be able to implement this emergency administrative regulation utilizing existing resources and staffing levels, and we do not believe that we will experience significant increased costs to relating to implementation.

(b) On a continuing basis: The Office of Insurance will be able to implement this emergency administrative regulation utilizing existing resources and staffing levels, and we do not believe that we will experience significant increased costs to relating to implementation.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding that would be used for the implementation and enforcement of this administrative regulation would be the budget of the Office of Insurance.

(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This emergency administrative regulation will not result in an increase to any fees or require an increase in funding.

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

(8) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all insurers that issue, deliver, or renew health benefit plans in the state of Kentucky.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

922 KAR 1:530. Post-adoption placement stabilization services.

RELATES TO KRS 199.011, 600.020, 605.100, 605.130, 620.170, 45 C.F.R. 1355.34(b), (c), 1356.22
STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the cabinet to promulgate, administer and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding under Title IV-E and IV-B of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency, to include post-legal adoption services. KRS 199 472 mandates that the cabinet establishes criteria for the adoption of children by administrative regulation. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.020(4), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. This administrative regulation establishes post-adoption placement stabilization services for children who were adopted from the custody of the cabinet, to the extent funds are available.

Section 1. Definitions. (1) "Aftercare plan" means a plan of care for a child upon the discontinuance of post-adoption placement stabilization services, which:

(a) Recommends services for the continued care of the child;
(b) Identifies community resources that have been arranged for the child or parent; and
(c) Includes actions that the parent agrees to take.

(2) "Child-care facility" is defined by KRS 199 011(6).

(3) "Commitment" is defined by KRS 600.020(12).

(4) "Family team meeting" means a meeting convened to develop services to avoid the dissolution of an adoption in accordance with Section 2(2)(b) of this administrative regulation.

(5) "Post-adoption placement stabilization services" or "PAPSS" means coordination, payment, and provision of care and treatment of an adopted child by the cabinet to prevent dissolution of the adoption.

Section 2. Eligibility Requirements for Services. (1) The cabinet shall consider a request for PAPSS made on behalf of an adopted child if:

(a) The adoptive parent receives adoption assistance for the child in accordance with 922 KAR 1:050; and
(b) Cabinet staff determines that after the provision of other prevention services, such as services provided in paragraph (2)(b)(2) of this section, the adoption of the child remains in jeopardy of dissolution.

(2) The cabinet shall consider a child eligible for PAPSS if:

(a) Upon a child's placement with a child-caring facility or a decision to extend PAPSS, the child is assessed a level of care by the cabinet or its agent and determined to meet criteria for:

1. Level IV as established in 922 KAR 1:360, Section 4(4); or
2. Level V as established in 922 KAR 1:360, Section 4(5); and
(b) The adoptive parent:

1. Receives adoption assistance for the child in accordance with 922 KAR 1:050; and
2. Has cooperated with other services to prevent the adoption's dissolution, such as:

a. IMPACT Plus services through the Kentucky Medicaid Program; and
b. Family Preservation Program in accordance with 922 KAR
1:410; or
   c. Crisis stabilization through the Kentucky Medicaid Program;
   3. Authorizes the cabinet to:
      a. Coordinate PAPSS for the child;
      b. Make a referral on behalf of the child to a child-caring facility
         for the child's placement, and
      c. Access confidential medical and treatment information about
         the child; and
   4. Agrees to:
      a. Participate in a family team meeting:
         (i) To include designated regional cabinet staff, family members,
             staff of the child-caring facility providing services to the child,
             or other individuals requested by the family or cabinet staff;
         (ii) Within the first thirty (30) days of a child's receipt of PAPSS;
         and
         (iii) As established in Section 4(4) of this administrative regulation;
      b. Cooperate with an assessment of the child to determine the
         child's needs and eligibility for PAPSS as required in Section
         2(2)(e) of this administrative regulation;
      c. Place the child with a child-caring facility operating in
         accordance with 922 KAR 1.360;
      d. Participate in the child's treatment to support reunification
         with the child; and
      e. A temporary discontinuance of the child's adoption assistance,
         provided in accordance with 922 KAR 1.050, during the
         period of the time the child receives PAPSS.

Section 3. Payment
   (1) To the extent funds are available, the
       cabinet shall pay a reimbursement rate for PAPSS consistent with
       the child's assessed level of care as established in Section 2(2)(e)
       of this administrative regulation.
   (2) The cabinet shall temporarily discontinue adoption assistance in
       accordance with 922 KAR 1.050.

Section 4. Timeframes for PAPSS
   (1) The cabinet shall discontinue payment for PAPSS after sixty (60) calendar days.
   (2) After the child has received PAPSS for sixty (60) calendar days, to the extent funds are available, the:
       (a) Commissioner or designee may approve the child for an
           additional thirty (30) calendar days, for a total of ninety (90) calendar
           days of PAPSS, if the:
           1. Child continues to meet the requirements specified in Section
              2(2)(a) of this administrative regulation; and
           2. Adoptive parent continues to meet the requirements specified
              in Section 2(2)(b) of this administrative regulation;
       (b) Cabinet may continue PAPSS to a child if the:
           1. Child continues to meet the requirements specified in Section
              2(2)(a) of this administrative regulation;
           2. Child's assessed needs require PAPSS beyond an additional
              thirty (30) calendar days; and
           3. Adoptive parent:
              a. Voluntarily commits the child to the cabinet in accordance
                 with KRS 620.170 and 45 C.F.R. 1356.22; and
              b. Continues to meet the requirements specified in Section
                 2(2)(b) of this administrative regulation.
       (3) To the extent funds are available; the cabinet may provide
           PAPSS to a child beyond ninety (90) calendar days in a twelve (12)
           month period, if the:
           (a) Child continues to meet the requirements specified in Section
               2(2)(a) of this administrative regulation; and
           (b) Adoptive parent meets the requirements of subsection
               2(2)(b)3 of this section.
   (4) If a child receives PAPSS, the cabinet may call a family
       team meeting for the child:
       (a) At thirty (30) calendar day intervals; or
       (b) More frequently than once (1) time in a thirty (30) day period
           with the consent of the adoptive parent.

Section 5. Continuation of PAPSS Through Voluntary
       Commitment
   (1) If an adoptive parent voluntarily commits a child to the
       cabinet for the child's continued benefit of PAPSS and continues to
       meet criteria established in Section 2(2)(b) of this administrative
       regulation, the cabinet shall seek no child support from the adoptive
       parent.
   (2) Any extension to the voluntary commitment of the child to
       the cabinet shall be in accordance with KRS 620.170 and 45
       C.F.R. 1356.22.

Section 6. Discontinuation and Aftercare
   The cabinet may develop an aftercare plan for the adoptive parent and child, if the:
   (1) Cabinet discontinues PAPSS; and
   (2) Adoptive parent assists in the aftercare plan's development.

Section 7. Appeals
   (1) An adoptive parent shall be granted an
       administrative hearing in accordance with 922 KAR 1.320 if the
       cabinet fails to:
       (a) Use reasonable promptness in its:
           1. Response to a request for PAPSS, or
           2. Referral of an eligible child to a child-caring facility for
              approved PAPSS; or
       (b) Call a family team meeting for a child during the:
           1. Sixty (60) calendar days a child receives PAPSS; or
           2. Period of time a child receives an extension to PAPSS in
              accordance with Section 2(2) and (3) of this administrative regulation.
   (2) Private child-caring facilities shall have appeal rights in
       accordance with 922 KAR 1.360, Sections 14 and 15.
   (3) An adoptive parent may request a review by the commissioner if criteria of 922 KAR 1.320, Section 8(2) are met.

Section 8. Out-of-State Request for PAPSS
   The cabinet shall consider out-of-state requests for a child adopted from the custody of the
   cabinet on a case-by-case basis, to include considerations regarding the:
   (1) Needs of the child,
   (2) Consent of the parent; and
   (3) Extent of funds available.

JAMES W. HOLLSINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
MIKE ROBINSON, Commissioner
APPROVED BY AGENCY: June 9, 2005
FILED WITH LRC: June 13, 2005 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this administrative regulation shall be held on
July 21, 2005, at 9 a.m. in the Cabinet for Health and Family Services
Auditorium, Health Services Building, 275 East Main Street,
Frankfort, Kentucky. Individuals interested in being heard at this
hearing shall notify this agency in writing by July 14, 2005, 5 working
days prior to the hearing, of their intent to attend. If no notification
of intent to attend the hearing is received by that date, the hearing
may be canceled. 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
August 1, 2005. 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 Ekridge
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative
regulation establishes post-adoption placement stabilization
services for children who were adopted from the custody of the
child, to the extent funds are available.
(b) The necessity of this administrative regulation: This
administrative regulation is necessary to establish post-adoption
placement stabilization services in Kentucky.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: KRS 194A.050(1) authorizes the cabinet to promulgate, administer, and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding under Titles IVB and IV of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency, to include post-legal adoption services. KRS 195.72 mandates the cabinet to establish criteria for the adoption of children. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement KRS Chapter 605 provisions, including KRS 605.130(4), which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. This administrative regulation conforms to these authorizing statutes by establishing post-adoption placement stabilization services, a post-legal adoption service, to children who have been adopted from the custody of the cabinet. These services are designed to address the critical needs of an adopted child and ensure that the child's adoptive home is able to provide for the child's well-being. These services are a preventive measure to avoid dissolution of a child's adoption or any maltreatment of an adopted child. Additionally, the post-adoption placement stabilization services created by this administrative regulation are available to eligible children who have been voluntarily committed to the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the authorizing statutes: This administrative regulation will assist in the effective administration of the state statutes and ensure compliance with federal funding expectations by establishing post-adoption placement stabilization services that are designed to help support the adoption of children from the custody of the cabinet, assist adoptive parents in providing for the needs of their adopted children, prevent the maltreatment of adopted children, and offer such services to eligible children who are currently committed to the cabinet. The services established in this administrative regulation will support the recruitment of adoptive parents for children available for adoption in the custody of 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 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 authorizing statutes: This is a new administrative regulation.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: There are 56 private child-caring facilities licensed in Kentucky who meet the operational requirements of this administrative regulation. There are currently 3,270 children who receive an adoption subsidy and who may be eligible for post-adoption placement stabilization services, if they meet eligibility requirements. The cabinet estimates 32 children are currently eligible to receive the post adoption placement stabilization services.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: The cabinet may refer a child for post-adoption placement stabilization services to be provided through any private child-caring facility that meets operational requirements of this administrative regulation. Those private agencies that render such services will receive a reimbursement from the cabinet. For those children who have been adopted from the custody of the cabinet and receive adoption assistance, they will have post-legal adoption supports to ensure their well-being and safety.

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

(a) Initially: $1,287,125

(b) On a continuing basis: $1,287,125

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding includes Federal Adoption Incentive funds and GF. Federal funds will be exhausted prior to the utilization of GF.

(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 be no increase in fees or funding. There are no fees in this administrative regulation. The cabinet has historically provided post-legal adoption services to children who have been adopted from the custody of the cabinet and their families. Through various studies and research into the needs of these children and families, the cabinet determined post-adoption placement stabilization services would offer treatment and support to those children with most critical needs. Because there are few adopted children who would receive these services, and parameters have been set for these services, the cabinet anticipates that costs will be absorbed in its current budget and appropriations.

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

(9) TIERING: Is tiering applied? No, tiering was not applied, as the administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 1355.34, 1356.22
2. State compliance standards. KRS 194A.050(1)
3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355.34, 1356.22
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. None
The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 14, 2005, at 10:00 a.m., in Room 149 of the Capitol Annex. Representative Tanya Pullin called the meeting to order, and the roll call was taken. The minutes of the May 10, 2005 meeting were approved.

Present were:

Members: Representative Tanya Pullin, Co-Chair; Senator Richard "Dick" Roeding, Co-Chair; Senators Alice Ker, Joey Pendleton, and Gary Tapp, Representatives James Bruce, Jimmie Lee, and Jon David Reinhardt.

LCG Staff: Dave Nicholas, Emily Caudill, Donna Little, Laura Milam, Karen Howard, Sarah Amburgey, Jennifer Harmon, and Ellen Steinberg.

Guests: Diana Barber, Patrick Shirley, Kentucky Higher Education Assistance Authority; Brenda Allen, Robert Brown, Dr. Manlyn Trup, Education Professional Standards Board; Robert B. Barnes, Teacher's Retirement System; Angela Robinson, Hiren Desai, Dwight Price, Ed Ross, Finance and Administration Cabinet; Bernard Decker, Department of Parks; Michael Rodman, Bill Schmidt, Board of Medical Licensure; David Cox, Board of Professional Engineers and Land Surveyors; David Casey, Jon Gassett, William Grayson, Jr., Jim Lane, Department of Fish and Wildlife Resources; Sean Aller, John S. Lyons, Environmental and Public Protection Cabinet; Larry Ball, Jack Damon, Steve Lynn, Kathi Peterson, Justice and Public Safety Cabinet; Brigid Devries, Kevin Noland, Roland Williams, Education Cabinet; Larry W. Moors, Sheila Potter, Council on Postsecondary Education; Rose Baker, Nelson Henderson, Al Mitchell, Terry M. Slade, Environmental and Public Protection; Shirley Eldridge, Elizabeth Caywood, Linda Fallis, Trish Howard, Charles Kendall, Jason Moseley, Cabinet for Health and Family Services; Matthew Hall, Governor's Office; Tom Fitzgerald, Kentucky Resources Council, Michelle Skinner, Dr. Paul Skinner, Rhoda Huston, Lynn Albanose, Michael Auslander, DVM, MSPH; Janice Bailey, Eric C. Blow, Metro Animal Services (Louisville); Dr. Dan Bowling, Animal Hospital of Nicholasville; Jennifer M. Caravello, Debbie Cobb, Frank Dempsey, Kentucky Watch Publications LLC; Dan Evans, Kentucky Animal Care and Control Association; Melissa Firestone, Jack Furlong, Nancy Furlong, Frances Hammon, Lonn Hancock, James Harrison, Kentucky Reptile Zoo, Betsy Hartley, Victoria Kong, Kathy Lang, Kentucky Animal Welfare Alliance, Karen Marshall, Jennifer McComas, Nicole Paquette, eq Animal Protection Institute; Austin Prater, Pam Rogers, The Humane Society of the U.S.; Meranda Sandlin, April Troutt, Primate Rescue Center; Kristen Wiley, Kentucky Reptile Zoo; Gary R. Williams UKB-KBA; Steve Wing, Louisville Zoo; Kim Wysong, SSA Chapter 68; Pamela Lyons Gromen, Denise Harding, Susan Schmid, Ric Urban, Newport Aquarium WAVE Foundation.

The Administrative Regulation Review Subcommittee met on Tuesday, June 14, 2005, and submits this report:

Kentucky Higher Education Assistance Authority: Division of Student and Administrative Services: KHEAA Grant Program

11 KAR 3:100. Administrative wage garnishment. Diana Barber, Assistant General Counsel, and Patrick Shirley, Senior Associate Counsel, represented KHEAA.

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; (3) to amend Sections 1, 2, and 3 to comply with the drafting and format requirements of KRS Chapter 13A; and (4) to add a new Section 3 to incorporate by reference application forms. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 2:100. Junior reserve officers training corps certification. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (2) 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.

16 KAR 3:060 Guidance counselor, provisional and standard certificates, all grades. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 1 to 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.

16 KAR 4:010. Qualifications for professional school positions. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Section 18 to clarify which certificate is required for a family resource center director. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 5:010. Standards for accreditation of educator preparation units and approval of programs. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 9, 12, 19, 24, and 27 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 6:010. Written examination prerequisites for teacher certification. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; and (3) to amend Sections 4 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 7:010. Kentucky Teacher Internship Program. A motion was made and seconded to approve the following amend-
ments: (1) to amend the RELATES TO paragraph to add statutory citations; (2) to amend Section 6 to delineate the extraordinary circumstances under which a teacher intern who was unable to complete an internship within one school year could complete it during a subsequent year; and (3) to amend Sections 3 to 9 and 12 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Teachers Retirement System: General Rules 102 KAR 1:175. Investment policies. Beau Barnes, General Counsel, represented the System.

In response to questions by Co-Chair Pullin, Mr. Barnes stated that the System rarely sent out individual notices of retirement system changes to selected groups of members because it was too difficult to determine which members were affected by the changes. Instead, the System prominently included any changes in its newsletter and also in its workshops.

Co-Chair Pullin stated that it was very important for the System to notify individual members of retirement system changes with the same vehemence and vigor that the System notified them of pending legislation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


Purchasing 200 KAR 5:021. Manual of policies and procedures. A motion was made and seconded to approve the following amendments: (1) to amend the "Finance and Administration Cabinet Manual of Policies and Procedures" to delete language that exempted from competitive bidding edible food products purchased by the Department of Parks for preparation and resale on site by the Department of Parks; and (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

200 KAR 5:039. Noncompetitive negotiations. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete language concerning the purchase of edible food products for preparation and resale on site by the Department of Parks; and (2) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

200 KAR 14:011. Qualified investments. A motion was made and seconded to approve the following amendments: to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Government Cabinet: Kentucky State Board of Licensure for Professional Engineers and Land Surveyors 201 KAR 18:030. In-training certificates. David Cox, Executive Director, represented the Board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to delete language that was ambiguous and Indefinite; (2) to amend the RELATES TO paragraph and Section 3 to correct statutory citations; and (3) to amend Sections 4 and 5 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 18:072. Experience. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to correct statutory citations; and (2) to amend Section 1 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 18:092. Surveying core curriculum. A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to correct statutory citations; and (2) to amend Section 1 to comply with the format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Commerce Cabinet: Department of Fish and Wildlife Resources: Game 301 KAR 2:082. Transportation and holding of exotic wildlife. Jon Gassett, Interim Commissioner, and Jim Lane, Wildlife Division Coordinator, represented the Department.

Commissioner Gassett stated that the Department was responsible for regulating the possession and protection of wildlife in Kentucky. As part of that statutory duty, this administrative regulation banned the importation and possession of exotic wildlife classified as inherently dangerous to human life. The amendments extended the ban to additional species including nonhuman primates, lions, tigers, bears, and cobras. Exotic wildlife used for medical purposes and existing pets were exempted from the ban. The Department promulgated the amendments to help stem the illegal exotic wildlife pet trade in Kentucky. The amendments were supported by numerous public health and wildlife experts and were similar to bans in twenty-three other states. Additionally, an executive order already banned the importation of nonhuman primates into Kentucky.

In response to questions by Co-Chair Roeding, Commissioner Gassett stated that licensed or accredited educational or research institutions could request permission to possess exotic wildlife for research purposes. Also, most current exotic pet owners could be grandfathered-in with veterinarian records.

In response to questions by Co-Chair Pullin, Commissioner Gassett stated that a helping hand monkey for a quadriplegic was an example of exotic wildlife that qualified under the medical exemption.

In response to questions by Representative Reinhardt, Commissioner Gassett stated that this administrative regulation also prohibited the breeding of inherently dangerous exotic wildlife. The Department would monitor compliance.

In response to questions by Senator Kerr, Commissioner Gassett stated that the ban on nonhuman primes included capuchin monkeys except for those that qualified for the medical exemption. Bites from capuchin monkeys could be very serious.

In response to questions by Representative Lee, Commissioner Gassett stated that the Department was not requiring a fee or a holding permit for current exotic pet owners to be exempt from the ban. Additionally, the ban was enforceable because the Department could investigate pet stores for illegal species and could determine if existing pets were replaced by comparing the physical characteristics of the animals. It was less expensive to control exotic wildlife by instituting a ban rather than a permitting program.

In response to questions by Representative Bruce, Commissioner Gassett stated that the Department did not have jurisdiction to regulate the possession of pit bulls; however, he felt that monkeys were equally dangerous because of their ability to carry human disease. He did not know of a case of a monkey killing a child.

The Subcommittee heard all persons wishing to speak on this administrative regulation. The following persons appeared in oppo-
sition to this administrative regulation: Rhoda Huston, Primate Owner; Dr. Paul Skinner, Simian Society member; Debbie Cobb, Consultant and Florida Citizen; Michelle Skinner; and Kim Wysong, President, Simian Society. The following persons appeared in favor of this administrative regulation: Dan Evans, Kentucky Animal Care and Control Association and Director, Kenton County Animal Shelter; Dr. Dan Bowling, Animal Hospital of Nicholasville; Dr. Michael Austander, State Veterinarian, Department for Public Health, Janice Bailey, Citizen of Ohio; James Harrison, Kentucky Reptile Zoo; Nicole Paquette, Attorney, Animal Protection Institute; Steve Wing, General Curator, Louisville Zoo; Pamela Lyons Gromen, Newport Aquarium; Roc Urban, Newport Aquarium; Enc C. Blow, Metro Animal Services, Louisville; Pam Rogers, Humane Society, U.S.; Meranda Sandlin, Primate Rescue Center; April Truitt, Director, Primate Rescue Center; Jennifer Caravello; and Frances Hammond.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:144. Fall wild turkey hunting. In response to a question by Representative Lee, Commissioner Gessett stated that the agency amendment returned the crossbow season to its current duration. The Department had not reached a compromise with the sportsmen on an expanded season.

In response to a question by Representative Reinhardt, Commissioner Gessett stated that the change from the agency amendment did not anticipate an increased deer harvest.

Senator Tapp stated that he appreciated the Department amending this administrative regulation to accommodate the public's interest in maintaining the current crossbow season.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to delete the provisions that permitted use of crossbow during the fall statewide archery season from November 1 to the third Monday in January. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:172. Deer hunting seasons and requirements. A motion was made and seconded to approve the following amendments: to amend Section 5 to delete the provisions that permitted the use of a crossbow during the fall statewide archery season from November 1 to the third Monday in January. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:178. Deer hunting on Wildlife Management Areas. A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to delete the provisions that permitted use of crossbow during the fall statewide archery season; (2) to amend Section 2 to clearly state that the archery season was the same as in 301 KAR 2:172 unless otherwise noted; (3) to amend Section 5 to make a minor correction; and (4) to amend Section 6 to delete language that was ambiguous and indefinite. Without objection, and with agreement of the agency, the amendments were approved.

301 KAR 2:179. State park deer hunts

Environmental and Public Protection Cabinet: Department for Environmental Protection: Division for Air Quality: Air Quality-General Administrative Procedures

401 KAR 50.017. Repeal of 401 KAR 50.016. Sean Alten, Supervisor, Regulation Development Section, and John Lyons, Director, represented the Division.

401 KAR 50.045. Performance tests. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs 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, (3) to amend Sections 1, 2, 3, 4, 5, 6 to delete vague and arbitrary language and clarify standards relating to performance testing methods, protocol, and waivers, and (4) to amend Sections 1, 2, and 4 to 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Standards of Performance

401 KAR 63.005. Open burning. Tom Fitzgerald, Kentucky Resources Council, appeared in opposition to this administrative regulation.

Mr. Fitzgerald stated that he was opposed to this administrative regulation because it sanctioned open burning of garbage in backyard environments. The combustion of mixed household garbage created toxic smoke which was the largest identifiable source of dioxin exposure. Open burning should be prohibited because proper garbage collection was available throughout the state. Furthermore, industrial sources of dioxins were already regulated.

In response to a question from Co-Chair Pullin, Mr. Lyons stated that only thirty-one (31) counties in Kentucky had mandatory garbage collection. Additionally, this administrative regulation deferred to any local ordinances which regulated open burning.

A motion was made and seconded to approve the following amendments: (1) to amend various sections to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 4(10) to state that fires set by county or municipal governments to dispose of wood waste or clean lumber shall not be considered to be in violation of 401 KAR 47:030, Section 10, which concerns open burning of solid waste or hazardous wastes by a solid waste site or facility. Without objection, and with agreement of the agency, the amendments were approved.

Justice and Public Safety Cabinet: Department of Corrections: Sex Offender Risk Assessment Advisory Board: Office of the Secretary

501 KAR 6:190. Approval process for mental health professionals performing comprehensive sex offender presentence evaluations and treatment of sex offenders. Jack Damien, Deputy General Counsel, and Kathy Peterson, Board Chairperson, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 3 to clarify the requirements for requesting an extension to complete continuing education hours; (2) to amend Section 8 to specify that specialty training and continuing education shall be approved by the board based on its nature or relevance; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 5, 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.

501 KAR 6:220. Treatment for sex offenders. A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Local Facilities: Direct Supervision for Full-service Jails


Department of Criminal Justice Training: Kentucky Law Enforcement Council

503 KAR 1:110 & E. Department of Criminal Justice Training basic training: graduation requirement; records. Larry Ball, Executive Director, and Steve Lynn, Assistant General Counsel, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 7 to specify that if a recruit leaves basic training due to being called for active duty in the Kentucky National Guard or other branch of the United States Armed Forces, the recruit may complete the remainder of the training within 180 days of his or her return from active duty service; and (2) to amend Sections 3, 4, 5, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Training Provision

503 KAR 3.010. Basic law enforcement training course recruit conduct requirements; procedures and penalties. A motion was made and seconded to approve the following amendments: (1) to
VOLUME 32, NUMBER 1 – JULY 1, 2005

amend Sections 4, 6, 8, 10, 13, and 14 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: Board of Education: Department of Education: Food Service Program

702 KAR 6:100. Appeal procedures for school and community nutrition programs. Kevin Noland, General Counsel, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the appeal procedures to also permit the appellant to be represented by another person in accordance with federal regulations; and (2) to amend Sections 2 to 4 for clarity and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

School Terms, Attendance and Operation

702 KAR 7 055. Designation of agent to manage high school interscholastic athletics. Brigid Devries, Commissioner, and Roland Williams, Assistant Commissioner, represented the Department.

A motion was made and seconded to approve the following amendments: (1) to amend the appeal procedures to also permit the appellant to be represented by another person in accordance with federal regulations; and (2) to amend Sections 2 to 4 for clarity and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Counsel on Postsecondary Education: Unemployment Insurance

787 KAR 1:010. Application for employer account; reports. Larry Moore, Policy Analyst, represented the Council.

A motion was made and seconded to approve the following amendments: to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.


A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Heating, Ventilation, and Air Conditioning Licensing Requirements

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 2 to specify the requirements for continuing education providers for course approval; (4) to amend Sections 1 to 7 and 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend Section 9 to incorporate by reference the required standards for continuing education courses. Without objection, and with agreement of the agency, the amendments were approved.

815 KAR 8:020 & E. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 2 to specify the requirements for continuing education providers for course approval; (4) to amend Sections 1 to 6 and 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend Section 9 to incorporate by reference the required standards for continuing education courses. Without objection, and with agreement of the agency, the amendments were approved.

Boilers and Pressure Vessels

815 KAR 15 080. Fees for licensing new boiler and pressure vessel contractors. Al Mitchell, State Fire Marshal, 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 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; (3) to amend Section 3 to incorporate by reference the required standards for continuing education courses; and (4) 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.

Electrical Inspectors


A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Section 3 to incorporate by reference the required standards for continuing education courses; and (4) 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.

815 KAR 35:060 & E. Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060. In response to a question by Senator Tapp, Mr. Mitchell stated that the Department was working with the Kentucky Community and Technical College System to enable KCTCS to offer continuing education programs for electricians. The Department wanted to increase the number of continuing education providers in Kentucky.

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; (3) to amend Section 2 to more clearly establish the application requirements for applicants for reciprocity; and (4) to amend Sections 2, 4, 5, 6, and 10 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Cabinet for Health and Family Services: Office of Certificate of Need: Certificate of Need

900 KAR 6 030. Certificate of need expenditure minimums. Trish Howard, Regulation Coordinator, represented the Office.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.
Department for Community Based Services: Division of Policy Development: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2.006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). Jason Moseley, Director of Policy Development, represented the Division.

A motion was made and seconded to approve the following amendments: (1) to create a new Section 2 establishing the requirement to be an "eligible parent," (2) to amend Section 11 to reference 901 KAR 5.070, Section 1, concerning documents declaring voluntary paternity; and (3) to amend various sections to specify citations, re-number, and comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The Subcommittee and the promulgating agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

General Government Cabinet: Board of Medical Licensure
201 KAR 9 018. Physician advertising.

Environmental and Public Protection Cabinet: Department for Natural Resources: General Provisions
405 KAR 7:001. Definitions for 405 KAR Chapter 7.

Permits
405 KAR 8.001. Definitions for 405 KAR Chapter 8.

Bond and Insurance Requirements
405 KAR 10:001. Definitions for 405 KAR Chapter 10.

Inspection and Enforcement
405 KAR 12:001. Definitions for 405 KAR Chapter 12.

Performance Standards for Surface Mining Activities
405 KAR 16:001. Definitions for 405 KAR Chapter 16.

Performance Standards for Underground Mining Activities
405 KAR 18:001. Definitions for 405 KAR Chapter 18.

Special Performance Standards
405 KAR 20 001. Definitions for 405 KAR Chapter 20.

Areas Unsuitable for Mining

Transportation Cabinet: Department of Vehicle Regulation: Commercial Driver's License
601 KAR 11.010. Fees relating to commercial driver's licenses.

Environmental and Public Protection Cabinet: Office of State Fire Marshal: Manufactured Homes and Recreational Vehicles
815 KAR 25:000. Requirements for certifying manufactured home installers.

Cabinet for Health and Family Services: Department for Medicaid Services: Office of the Commissioner: Medicaid Services
907 KAR 1:019 & E. Outpatient Pharmacy Program.

The subcommittee adjourned at 12:45 p.m., until Tuesday, July 12, 2005.
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.

Interim Joint Committee on Education
Meeting of June 13, 2005

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Education for its meeting of June 13, 2005, having been referred to the Committee on June 1, 2005, pursuant to KRS 13A.290(6).

11 KAR 5:130
11 KAR 5:140
11 KAR 5:145
11 KAR 18.010

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 13, 2005 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 31 of the Administrative Register from July, 2004 through June, 2005. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in VOLUME 30 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2004 bound Volumes were published.

KRS Index

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 31 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 31 of the Administrative Register, and is mainly broken down by agency.
## VOLUME 30

The administrative regulations listed under VOLUME 30 are those administrative regulations that were originally published in Volume 30 issues of the Administrative Register but had not yet gone into effect when the 2004 bound Volumes were published.

### ORDINARY ADMINISTRATIVE REGULATIONS:

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## VOLUME 31

The administrative regulations listed under VOLUME 31 are those administrative regulations that were originally published in Volume 31 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2005 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first.)

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A - 3
### LOCATOR INDEX - EFFECTIVE DATES

<table>
<thead>
<tr>
<th>Regulation Number</th>
<th>31 Ky.R. Page No.</th>
<th>Effective Date</th>
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<td>KRS SECTION</td>
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<td>304.32 - 165</td>
<td>806 KAR 17:500</td>
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<td>304.4 - 010</td>
<td>806 KAR 14:007</td>
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<tr>
<td>304A - 0954</td>
<td>806 KAR 17:150</td>
</tr>
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<td>311.550</td>
<td>907 KAR 1:018</td>
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<td>319A.090</td>
<td>201 KAR 28:190</td>
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<td>201 KAR 18:030</td>
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<td>322.120</td>
<td>201 KAR 18:030</td>
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<td>322.290</td>
<td>201 KAR 18:092</td>
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<td>324A.035</td>
<td>201 KAR 30:050</td>
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<td>201 KAR 30:050</td>
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<td>341.190</td>
<td>787 KAR 1:010</td>
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<td>342.0011</td>
<td>803 KAR 25:010</td>
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<td>803 KAR 25:021</td>
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<td>803 KAR 25:028</td>
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<td>803 KAR 25:028</td>
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<td>342 760</td>
<td>803 KAR 25:028</td>
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<td>439</td>
<td>501 KAR 6:020</td>
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<td>532</td>
<td>501 KAR 6:240</td>
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<td>600.020</td>
<td>922 KAR 1:530</td>
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<td>605.100</td>
<td>922 KAR 1:530</td>
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<td>605.130</td>
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<td>922 KAR 1:530</td>
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<td>7 C.F.R.</td>
<td>702 KAR 6:100</td>
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<td>34 C.F.R.</td>
<td>921 KAR 3:020</td>
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<tr>
<td>42 C.F.R.</td>
<td>11 KAR 3:100</td>
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<td>45 C.F.R.</td>
<td>907 KAR 1:018</td>
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<td>49 C.F.R.</td>
<td>921 KAR 2:006</td>
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<td>8 U.S.C.</td>
<td>922 KAR 1:530</td>
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<td>12 U.S.C.</td>
<td>702 KAR 5:080</td>
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<td>921 KAR 2:006</td>
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<td>11 KAR 3:100</td>
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</tbody>
</table>
SUBJECT INDEX

ADOPTION
(See Community Based Services, Department for: Child Welfare)

ADULT EDUCATION AND LITERACY, DEPARTMENT FOR
(See Postsecondary Education, Council on)

AIR QUALITY, DIVISION OF
General Administrative Procedures
Performance tests; 401 KAR 50:045
General Standards of Performance
Open burning, 401 KAR 63.005

CERTIFICATE OF NEED
(See Health and Family Services, Cabinet of)

CHILD WELFARE
(See Community Based Services, Department for)

COMMERCE CABINET
Fish and Wildlife Resources, Department of; Title 301 (See Fish and Wildlife Resources, Department of)

COMMONWEALTH MERIT SCHOLARSHIP PROGRAM
(See Kentucky Higher Education Assistance Authority)

COMMUNITY BASED SERVICES, DEPARTMENT FOR
Child Welfare
Post-adoption placement stabilization services; 922 KAR 1:530
Food Stamp Program
Financial requirements; 921 KAR 3 020
K-TAP, Kentucky Works, Welfare to Work, State Supplementation
Technical requirements for K-TAP; 921 KAR 2:006

CONTROLLER, OFFICE OF THE
Accounts
Repeal of 109 KAR 11:020; 109 KAR 11:021
Controller
Advancements to sheriffs; 200 KAR 38:050
Internal controls and preaudit; 200 KAR 38:070
Law enforcement officers reimbursement for certain expenses, 200 KAR 38.060
Travel Expense and Reimbursement
Employee's reimbursement for travel; 200 KAR 2:006

CORRECTIONS, DEPARTMENT OF
Secretary, Office of the
Home incarceration using an approved monitoring device; 501 KAR 6.240
Policies and procedures, 501 KAR 6:020
Secured polices and procedures; 501 KAR 6:999
Sex Offender Risk Assessment Advisory Board
Approval process for mental health professionals performing comprehensive sex offender presentation evaluations and treatment of sex offenders; 501 KAR 6:190
Treatment for sex offenders; 501 KAR 6:220

CRIMINAL JUSTICE TRAINING, DEPARTMENT OF
(See Justice and Public Safety Cabinet)

EDUCATION CABINET
District Support Services, Office of; Title 702 (See Education, Department of)

Education, Board of
Education, Department of; Title 701 through 710 (See Education, Department of)
Kentucky Higher Education Assistance Authority; Title 11 (See Kentucky Higher Education Assistance Authority)
Learning Results Services, Bureau of; Title 703 (See Education, Department of)
Postsecondary Education, Council on; Title 13 and Title 785 (See Postsecondary Education, Council on)
Workforce Investment
Unemployment Insurance
Application for employer account, reports; 787 KAR 1.010

EDUCATION, DEPARTMENT OF
District Support Services, Office of
Food Service Programs
Appeal procedures for school and community nutrition programs; 702 KAR 6:100
Pupil Transportation
Bus drivers' qualifications, responsibilities, and training; 702 KAR 5 080
Learning Results Services, Bureau of
Assessment and Accountability
Assessment and accountability definitions; 703 KAR 5:001
School accountability, formula for determining; 703 KAR 5:020
School district accountability; 703 KAR 5:130

EDUCATION PROFESSIONAL STANDARDS BOARD
Administrative Certificates
Guidance counselor, provisional and standard certificates, all grades; 16 KAR 3 060
Assessment
Examination prerequisites for principal certification; 16 KAR 6:033
Written examination prerequisites for teacher certification; 16 KAR 6:010
Certification Procedures
Qualifications for professional school positions; 16 KAR 4.010
Educator Preparation
Standards for accreditation of educator preparation units and approval of programs; 16 KAR 5.010
Internship
Kentucky Teacher Internship Program; 16 KAR 7:010
Teaching Certificates
Junior Reserve Officers Training Corps certification; 16 KAR 2:100
School psychologist; 16 KAR 2:090

ELECTRICAL INSPECTORS; ELECTRICIANS
(See Housing, Buildings and Construction)

ENGINEERS, BOARD OF LICENSURE FOR PROFESSIONAL EXPERIENCE
Experience; 201 KAR 18:072
In-training certificates; 201 KAR 18.030
Surveying core curriculum; 201 KAR 18.092

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Environmental Protection, Department for
Air Quality, Division of; 401 KAR Chapters 50 through 100 (See Air Quality, Division of)
Water, Division of; 401 KAR Chapters 4 through 8 (See Water, Division of)
Housing, Buildings and Construction; Title 815 (See Housing, Buildings and Construction)
Insurance, Office of; Title 806 (See Insurance, Office of)
Labor, Department of; Title 803 (See Labor, Department of)

FINANCE AND ADMINISTRATION CABINET
Controller, Office of the; Title 109 Chapter 11 and Title 200 (See
SUBJECT INDEX

Controller, Office of the
Purchasing
Manual of policies and procedures; 200 KAR 5:021
Noncompetitive negotiations; 200 KAR 5:309
Revenue, Department of, Title 103 (See Revenue, Department of)
State Investment Commission
Qualified investments; 200 KAR 14:011
Repurchase agreement; 200 KAR 14:081

FISH AND WILDLIFE RESOURCES, DEPARTMENT OF
Game
Deer hunting on Wildlife Management Areas; 301 KAR 2:178
Deer hunting seasons and requirements, 301 KAR 2:172
Fall wild turkey hunting; 501 KAR 2:144
Transportation and holding of exotic wildlife; 301 KAR 2:082

FOOD STAMP PROGRAM
(See Community Based Services, Department for)

GENERAL EDUCATION DEVELOPMENT (GED)
(See Postsecondary Education, Council on: Adult Education and Literacy, Department for)

GENERAL GOVERNMENT CABINET
Engineers, Board of Licensure for Professional; 201 KAR Chapter 18 (See Engineers, Board of Licensure for Professional)
Occupational Therapy, Board of Licensure for; 201 KAR Chapter 28
(See Occupational Therapy, Board of Licensure)
Real Estate Appraisers Board; 201 KAR Chapter 30 (See Real Estate Appraisers Board)

HEALTH AND FAMILY SERVICES, CABINET OF
Certificate of Need, Office of
Certificate of need expenditure minimums; 900 KAR 6:030
Community Based Services, Department for; Title 921 and Title 922
(See Community Based Services, Department for)
Medicaid Services, Department for; Title 907 (See Medicaid Services, Department for)

HEALTH INSURANCE
(See Insurance, Office of)

HEATING, VENTILATION AND AIR CONDITIONING, DIVISION OF
(See Housing, Buildings and Construction)

HOUSING, BUILDINGS AND CONSTRUCTION
Boilers and Pressure Vessels
Fees for licensing new boiler and pressure vessel contractors; 815 KAR 15:080
Building Codes Enforcement, Division of
Kentucky Building Code/2002; 815 KAR 7.120
Electrical Inspectors
Certification of electrical inspectors; 815 KAR 35:015
Licensing of electrical contractors, electricians, and master electricians pursuant to KRS 227A.060; 815 KAR 35:060
Heating, Ventilation and Air Conditioning, Division of
Journeyman HVAC mechanic licensing requirements; 815 KAR 8:020
Limited licenses for journeyman HVAC mechanic; 815 KAR 8:045
Master HVAC contractor licensing requirements; 815 KAR 8:010

HUNTING
(See Fish and Wildlife Resources, Department of)

INSURANCE, OFFICE OF
Health Insurance Contracts
Basic health benefit plan requirements; 806 KAR 17:500
Health benefit plan rate filing requirements; 806 KAR 17:150
Insurance Contract
Rate and form filing for health insurers; 806 KAR 14:007

JAILS
(See Corrections, Department of)

JUNIOR RESERVE OFFICERS TRAINING CORPS
(See Education Professional Standards Board: Teaching Certificates)

JUSTICE AND PUBLIC SAFETY CABINET
Corrections, Department of; Title 501 (See Corrections, Department of)
Criminal Justice Training, Department of
Basic law enforcement training course recruit conduct requirements; procedures and penalties; 503 KAR 3:010
Kentucky Law Enforcement Council
Department of Criminal Justice Training basic training; graduation requirements; records; 503 KAR 1:110

KENTUCKY BUILDING CODE/2002
(See Housing, Buildings and Construction: Building Codes Enforcement, Division of)

KENTUCKY EDUCATIONAL EXCELLENCE SCHOLARSHIP PROGRAM
(See Kentucky Higher Education Assistance Authority, Commonwealth Merit Scholarship Program)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Commonwealth Merit Scholarship Program
Kentucky Educational Excellence Scholarship (KEES) Program; 11 KAR 15:090
Kentucky Loan Program
Administrative wage garnishment; 11 KAR 3:100

KENTUCKY LAW ENFORCEMENT COUNCIL
(See Justice and Public Safety Cabinet)

KENTUCKY LOAN PROGRAM
(See Kentucky Higher Education Assistance Authority)

KENTUCKY TEACHER INTERNSHIP PROGRAM
(See Education Professional Standards Board: Internship)

KENTUCKY TRANSITIONAL ASSISTANCE PROGRAM
(See Community Based Services, Department for)

KENTUCKY WORKS
(See Community Based Services, Department for)

LABOR, DEPARTMENT OF
Workers' Claims, Office of
Adjustments of claims, procedures; 803 KAR 25:010
Filing of claims information; 803 KAR 25:170
Individual self-insurers; 803 KAR 25:021
Repeal of 803 KAR 25:026; 803 KAR 25:026
Special fund and employer joint liability; 803 KAR 25:030
Workers' Compensation Medical Fee Schedule for Physicians; 803 KAR 25:089

MEDICAID SERVICES, DEPARTMENT FOR
Medicaid Services
Reimbursement for drugs; 907 KAR 1:018

OCCUPATIONAL THERAPY, BOARD OF LICENSURE FOR
Occupational therapy low-vision and visual-therapy services; 201 KAR 28:190

POSTSECONDARY EDUCATION, COUNCIL ON
Adult Education and Literacy, Department for
GED eligibility requirements; 785 KAR 1:130
Public Educational Institutions
Determination of residency status for admission and tuition assessment purposes; 19 KAR 2.045

PRISONS
(See Corrections, Department of)

REAL ESTATE APPRAISERS BOARD
Examination, education, and experience requirement; 201 KAR 30:060

REVENUE, DEPARTMENT OF
Ad Valorem Tax; Local Assessment
Repeal of 103 KAR 7:040 and 103 KAR 7:050; 103 KAR 7:021
Sales and Use Tax; Miscellaneous Retail Transactions
Leases and rentals; 103 KAR 28.051

A - 10
SUBJECT INDEX

SCHOOLBUSSES
(See Education, Department of, District Support Services, Office of
Pupil Transportation)

SEX OFFENDER RISK ASSESSMENT ADVISORY BOARD
(See Corrections, Department of)

STATE INVESTMENT COMMISSION
(See Finance and Administration Cabinet)

TAXES
(See Revenue, Department of)

TEACHERS' RETIREMENT SYSTEM
General Rules
Investment policies; 102 KAR 1:175

WATER, DIVISION OF
Water Resources
Water withdrawal permits, criteria, reports; 401 KAR 4.010

WELFARE TO WORK
(See Community Based Services, Department for)

WORKERS' CLAIMS, OFFICE OF
(See Labor, Department of)

WORKERS' COMPENSATION
(See Labor, Department of: Workers' Claims, Office of)

WORKFORCE INVESTMENT
(See Education Cabinet)