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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tenta-
tively scheduled to meet Monday, March 13, 2006 at 2 p.m. in
Room 131 of the Capitol Annex Building, Frankfort, Kentucky.
See tentative agenda on pages 1509-1510 of this Administrative
Register.
The ADMINISTRATIVE REGISTER OF KENTUCKY is the monthly supplement for the 2005 Edition of KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

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Board
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402 KAR 3:020. Master Logger Program. (Amended After Comments)
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Certificate of Need
900 KAR 5:020 & E. State Health Plan for facilities and services. ("E" expires 6/26/2006)

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Institutional Care
908 KAR 3:190 & E. Drug testing policies at a state operated facility for persons with mental illness or mental retardation. ("E" expires 6/7/2006) (Deferred from January)

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K-TAP, Kentucky Works, Welfare to Work, State Supplementation
921 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. ("E" expires 7/2/2006)
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 1:040E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
New Emergency Administrative Regulation
103 KAR 1:040E. Waiver of penalties.

RELATES TO: KRS 131.010(9), 131.030(3), 131.081(6),
131.175, 131.180, 131.440(3)(d), 133.180, 133.220, 138.885,
139.185, 141.180(7), 141.180(8), 141.340(2), 141.990, 142.357,
143.085.

EFFECTIVE: February 10, 2006

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.175
authorizes the Department of Revenue to promulgate administrative
regulations concerning waiver of penalties. This administrative
regulation establishes the criteria used to determine if the taxpayer
has demonstrated reasonable cause to waive penalties.

Section 1. Enumeration of Circumstances Constituting Reasonable Cause. The Department of Revenue shall employ the following criteria to determine if the taxpayer has demonstrated reasonable cause to waive penalties:

(1) Erroneous advice by Department of Revenue, if in accordance with KRS 131.081(6)
(2) Death or serious illness of taxpayer or immediate family - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer or a member of the taxpayer’s immediate family. If the taxpayer is not an individual, the death or serious illness shall be that of an individual having sole authority to execute the return or a member of the individual’s immediate family. The following factors shall be considered in a determination of the applicability of the section:
(a) Relationship of parties involved;
(b) Date of death;
(c) Date and nature of serious illness;
(d) Length of time from the date of death or serious illness to the date prescribed by law for filing a return, including any extension granted;
(e) Explanation of how the event prevented compliance; and
(f) Explanation of other business obligations that were impaired.

(3) Death or serious illness of taxpayer’s tax return preparer - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer’s tax return preparer. The following factors shall be considered in a determination of the applicability of this section:
(a) Name of preparer and date of death;
(b) Date and nature of serious illness;
(c) Length of time from the date of death of the tax preparer to the date prescribed by law for filing a return, including any extension granted; and
(d) Explanation of how the death or serious illness prevented compliance.

(4) Destruction or unavailability of taxpayer records by a catastrophic event - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the destruction or unavailability of the taxpayer’s records by a catastrophic event. The following factors shall be considered in a determination of the applicability of this section:
(a) Date and description of catastrophic event;
(b) Supporting documentation such as a copy of the police, fire, or insurance reports;
(c) Explanation of how the destruction or unavailability of records prevented compliance; and
(d) Explanation of all other means explored to secure needed tax information.

(5) Inability to obtain records in custody of third party - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the inability to obtain taxpayer’s records in the custody of a third party. The following factors shall be considered in a determination of the applicability of this section:
(a) The records in the custody of a third party and the third party’s identity;
(b) Explanation of why the records were needed to comply;
(c) Explanation of why the records were unavailable and what steps were taken to secure the records;
(d) Explanation of when and how the taxpayer became aware that the necessary records were unavailable;
(e) Supporting documentation such as copies of letters written and responses received in an effort to get the needed information; and
(f) Explanation of all means explored to secure needed tax information.

(6) Undue hardship - Penalties may be waived if the enforcement of the penalty or fee would constitute an undue hardship on the taxpayer, and if waiver of the penalty or fee would facilitate collection of the tax liability. A taxpayer shall demonstrate that reasonable care and prudence was exercised in providing for payment of the tax, but the taxpayer was unable to pay the tax.
(a) The following factors shall be considered in determining undue hardship:
1. Nature of the tax which the taxpayer has failed to pay;
2. Amount and nature of the taxpayer’s expenditures in light of the income the taxpayer could, at the time of such expenditures, reasonably have expected to receive prior to the date prescribed by law for the payment of the tax;
3. Reasonableness of the taxpayer’s efforts to conserve sufficient assets in marketable form to satisfy the tax liability;
4. Potential loss due to the sale of property at a sacrificed price. If a market exists, the sale of property at the current market price shall not be considered as resulting in an undue hardship;
5. Equity in assets, including repayment ability;
6. Family size;
7. Necessary living expenses, if a taxpayer is an individual, or necessary business expenses;
8. Income from all sources, both taxable and nontaxable, including income of the nonliable spouse to the extent used for the necessary living expenses of a family;
9. Stability of income and anticipated increases or decreases;
10. Current status of business;
11. Possibility of payment through an installment agreement; and
12. Age and health of a taxpayer.

(b) The following factors shall be considered in determining whether waiver of a fee or penalty facilitates collection of the tax liability:
1. Dischargeability of tax liability in bankruptcy;
2. Collectability of the tax, penalty, and interest directly from the taxpayer, as determined from the taxpayer's financial statements;
3. Availability of sources of funds for payment not under the control of the taxpayer; and
4. Past and current compliance with Department of Revenue filing and payment requirements.

(7) Human error. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by human error and the delay or failure is the first such occurrence over the last twelve (12) calendar months if the taxpayer is a monthly or quarterly filer, or twenty-four (24) months if the taxpayer is an annual filer, and Department of Revenue records show that the taxpayer took appropriate steps to eliminate the delinquency in a timely manner.

(8) Errorneous advice by tax advisor. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the receipt of erroneous advice from a tax advisor or other professional on whom the taxpayer relied. The necessity to rely on the advice shall establish the presence of the following three (3) factors for the Department of Revenue to consider the applicability of this section:
(a) Unfamiliarity of the taxpayer with the tax laws, and actual reliance by the taxpayer on the advice of the tax advisor;
(b) Supporting documentation of full disclosure by the taxpayer of all relevant facts provided to the tax advisor or other professional retained and advice received, including:
1. A copy of the advice requested;
2. A copy of the advice provided; and
3. A statement from the tax advisor explaining the circumstances; and
(c) Exercise of reasonable care and prudence by the taxpayer in determining whether to secure further advice.

(9) Reliance on substantial legal authority. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by reliance on substantial legal authority for the particular tax treatment of an item of gross income, deduction, exemption, credit, or basis. The following factors shall be considered in a determination of the applicability of this section:
(a) Actual reliance by the taxpayer at the time of failure to file the return or report or pay the tax; and
(b) Conspicuous, full disclosure by the taxpayer in the return, if a return was filed, of the position that is contrary to the Department of Revenue's position, including all copies of or citation to the Internal Revenue Code, the Kentucky Revised Statutes, final and temporary regulations of the Internal Revenue Service and the Department of Revenue, Revenue Rulings, Revenue Procedures, and Private Letter Rulings of the Internal Revenue Service, case law interpreting the previous items, or any other relevant legal authority which provides that the tax treatment is more likely than not correct.

(10) Tax modernization. For taxable periods beginning after December 31, 2004 and before January 1, 2006, the penalty for any declaration underpayment, as provided in KRS 131.180 and 141.900(3) shall be waived if the declaration underpayment is directly related to the changes to the tax laws pursuant to 2005 Ky. Acts ch. 168, and the taxpayer made a good faith effort to comply with 2005 Ky. Acts ch. 168.

Section 2. Taxpayer's Support for Reasonable Cause. 
(1) Responsibility for request - The taxpayer shall:
(a) Request reduction or waiver of any penalty, in writing; and
(b) Provide all supporting documentation necessary to substantiate reasonable cause.

(2) Time of request - A taxpayer may attach a statement requesting waiver for reasonable cause to a return or may request waiver after notice of assessment.

(3) Request by representative of taxpayer - A request from a taxpayer's representative shall be considered a request by the taxpayer if the taxpayer has provided a properly signed power of attorney or the Department of Revenue is satisfied by any other written statement that the representative has been authorized to act for the taxpayer.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 9, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Contact person: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1958, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 131.130(1), 141.018, and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation establishes the criteria used to determine if the taxpayer has demonstrated reasonable cause to waive penalties.
(b) The necessity of the administrative regulation: KRS 131.175 authorizes the Department of Revenue to promulgate administrative regulations concerning waiver of penalties.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 131.175 authorizes the Department of Revenue to promulgate administrative regulations concerning waiver of penalties.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the criteria used to determine if the taxpayer has demonstrated reasonable cause to waive penalties.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: 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 any taxpayer assessed with penalties that wishes to have those penalties waived.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation provides concrete guidelines for when waiving penalties is appropriate and what kind of information the taxpayer will need to produce to have penalties waived.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: 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.
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(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, because the requirements of this regulation apply to every taxpayer, under the principles of uniformity of taxation.

STATEMENT OF EMERGENCY

103 KAR 1:050E

This emergency administrative regulation is being promulgated in order to provide taxpayers necessary information to complete and file various tax returns required to be submitted to the Finance and Administration Cabinet’s Department of Revenue. The Department of Revenue is permitted by KRS 131.130(1) to promulgate administrative regulations necessary to administer taxes. This administrative regulation must be placed into effect immediately, in accordance with KRS 13A.190(1)(a) 2 and 3 to apply to any income tax returns due for taxable years beginning on or after January 1, 2006 and forms and returns for other taxes of various due dates and taxable periods. An ordinary administrative regulation is not sufficient, because the public relies on those forms and instruction in order to make timely and accurate filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

Emie Fletcher, Governor
R. B. Rudolph, Jr., Secretary

FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue
(Emergency Amendment)

103 KAR 1:050E. Forms manual.


STATUTORY AUTHORITY: KRS 131.130(3)

EFFECTIVE: February 10, 2006

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


(2) Revenue Form 10A001, "Request to Inspect Public Records", shall be completed by the public to request access to public records specified on the form.

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

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

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

(a) Employer's Kentucky withholding;
(b) Corporation Income [and-licensee];
(c) Motor vehicle tire fee; and
(d) Sales and use.

(6) Revenue Form 10A100CS, "Kentucky Tax Registration Application", shall be used to apply for tax registration of the following taxes:

(a) Employer's Kentucky withholding;
(b) Corporation Income [and-licensee];
(c) Motor vehicle tire fee; and
(d) Sales and use.

(7) Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", provides Instructions for the proper completion of Revenue Form 10A100, Kentucky Tax Registration Application for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee.

(8) Revenue Form 10A100CS-I, "Instructions for Kentucky Tax Registration Application", provides Instructions for the proper completion of Revenue Form 10A100CS, Kentucky Tax Registration Application for Withholding, Corporation, Sales and Use Taxes, and Motor Vehicle Tire Fee.

(9) Revenue Form 10A100-S, "Kentucky Tax Registration Supplemental Information Schedule" shall be completed by persons submitting Revenue Form 10A100 or 10A100CS to provide additional business information.

(10) Revenue Form 10A101, "Kentucky General Business License Application", shall be completed by every person required to obtain a seller's permit as provided in KRS 139.240 and every person required to register and collect Kentucky use tax under KRS 139.340.

(11) Revenue Form 10A170, "Request For Notification of Administrative Regulation Filing" shall be used by individuals to request receipt of copies of ordinary administrative regulations filed with the Legislative Research Commission by the Department of Revenue.

(12) Revenue Form 10A700, "Kentucky Tax Amnesty Applica-
tion", shall be completed as application for the Tax Amnesty Program offered between August 1, 2002 and September 30, 2002.

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

(14) Revenue Form 10F710, "Important Information Regarding Your Tax Amnesty Application", shall provide the public with information relating to the Kentucky Tax Amnesty Program.

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

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

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

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

(19) Revenue Form 12A109, "Release of Levy", shall be presented to the bank or third party on which the levy was served for the purpose of releasing the seized property.

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

(21) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request", shall be used by a taxpayer requesting to pay Kentucky tax liability in installments.

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

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

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

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

(26) Revenue Form 12A504, "Personal Assessment of Corporate Officer", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

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

(28) Revenue Form 12A506, "Waiver Extending Statutory Period for Collections", shall be presented to the taxpayer for the purpose of extending the period in which the liability may be collected.

(29) Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", shall be presented to employers with a wage levy on an employee for the purpose of calculating the dollar amount of wages due to the employee.
Kentucky Tax Registration Application for Individual Income Tax Employer Withholding, Corporation Income and License, Coal Severance and Processing and Sales and to advise as to the account numbers assigned by the department.

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

(50) Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the taxpayer and the auditor to acknowledge payment of taxes determined to be tentative due at the time of an audit.

(51) Revenue Form 31A010, "Sales Tax and Electronic Data Questionnaire", shall be used to ascertain the capability of taxpayer records to facilitate audit through use of electronic data.

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

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

(54) Revenue Form 31A149, "Agreement Filing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby the taxpayer agrees to file in business in Kentucky to register for the Kentucky Bank Franchise Tax.

(55) Revenue Form 31A188, "Authorization to Examine Bank Records", shall be used by the Department of Revenue to obtain permission from a taxpayer to examine records in connection with transactions at the taxpayer's bank.

(56) Revenue Form 31A275, "Statute of Limitations Agreement", shall be completed by a taxpayer and a representative of the Kentucky Department of Revenue whereby both parties consent and agree that certain income tax deficiencies or overpayments for specific periods may be assessed or refunded beyond the normal four (4) year statute of limitations.

(57) Revenue Form 42F102, "Large Employer Program Electronic Filing Fact Sheet", shall provide employers with information on the "ELF" Federal/State Electronic Tax Filing Program.

Section 2. Alcoholic Beverage Tax. (1) Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", shall be used by persons importing distilled spirits, wine and malt beverages from Kentucky through the United States Postal Service and Customs for personal consumption in this state to acknowledge liability for the alcoholic beverage excise tax.

(2) Revenue Form 73A525, "Monthly Report of Distillers, Rectifiers or Bottlers", shall be used by distillers, rectifiers or bottlers of distilled spirits to report liability for distilled spirits excise tax and wholesale sales tax.

(3) Revenue Form 73A526, "Wholesaler's Monthly Distilled Spirits Tax Report", shall be used by wholesalers of distilled spirits to report liability for distilled spirits excise tax and wholesale sales tax.

(4) Revenue Form 73A527, "Wholesaler's List of Individual Spirits Shipments Acquired", shall be used by wholesalers of distilled spirits to itemize monthly receipts of distilled spirits from all sources.

(5) Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", shall be used by consignor of distilled spirits and wine to report trafficking in alcoholic beverages during the previous month.

(6) Revenue Form 73A531, "Transporter's Report of Alcoholic Beverages Delivered", shall be used by transporters of distilled spirits, wine and malt beverages to report shipments of alcoholic beverages delivered into the state during the previous month.

(7) Revenue Form 73A535, "Report on Destruction of Alcoholic Beverages", shall be used by governmental officials to certify quantities of tax-paid alcoholic beverages no longer suitable for consumption that are destroyed in the officials' presence.

(8) Revenue Form 73A575, "Wholesaler's Monthly Wine Tax Report", shall be used by wine wholesalers to report liability for wine excise tax and wine wholesale sales tax.

(9) Revenue Form 73A576, "Vintner's Wine Report", shall be used by vintners to report liability for wine excise tax and wine wholesale sales tax.

(10) Revenue Form 73A577, "Wholesaler's List of Individual Wine Shipments Acquired", shall be used by wine wholesalers to report shipments of wine received during the previous month.

(11) Revenue Form 73A582, "Brewer's Monthly Report Schedule", shall be used by brewers of malt beverages to report sales and distribution of malt beverages into Kentucky.

(12) Revenue Form 73A582, "Brewer Distributor's Monthly Report", shall be used by brew distributors to report shipments of malt beverages received during the previous month.

(13) Revenue Form 73A582, "Distributor's Monthly Malt Beverage Excise Tax and Wholesale Sales Report", shall be used by distributors of malt beverages to report liability for malt beverage excise tax and malt beverage wholesale sales tax.

(14) Revenue Form 73A582, "Beer Distributor's Sales to Federal Agencie", shall be used by beer distributors to report shipments of malt beverages to federal military agencies.

Section 3. Bank Franchise Tax - Required Forms. (1) Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", shall be used by financial institutions which are regularly engaged in business in Kentucky to register for the Kentucky Bank Franchise Tax.

(2) Revenue Form 73A801, "2005 [2004] Bank Franchise Tax Return", shall be used by financial institutions to determine the net capital and Kentucky Bank Franchise Tax due for the calendar year 2005 [2004].

(3) Revenue Form 73A801, "2005 [2004] Kentucky Bank Franchise Tax Forms and Instructions Packet", provides a single packet the forms used by financial institutions to register for the Kentucky Bank Franchise Tax, to determine the net capital and annual tax due, and to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

(4) Revenue Form 73A802, "Application for Ninety (90) Day Extension of Time to File Kentucky Bank Franchise Tax Return", shall be used by financial institutions to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

Section 4. Cigarette Tax - Required Forms. (1) Revenue Form 73A181, "Cigarette Licenses Application", shall be used by persons interested in acting as a cigarette wholesaler, subjobber, vending machine operator, or unclassified acquirer to apply for the necessary license.

(2) Revenue Form 73A190, "Cigarette License", shall be used by the Department of Revenue to give evidence to cigarette wholesalers, subjobbers, vending machine operators, transporters and unclassified acquirers that they have been granted the appropriate license.

(3) Revenue Form 73A404, "Cigarette Tax Stamps or Meter Units Order Form", shall be used by licensed cigarette wholesalers or unclassified acquirers to order cigarette tax stamps.

(4) Revenue Form 73A406, "Cigarette Tax Credit Certificate", shall be used by the Department of Revenue to give credit to a licensed cigarette wholesaler or unclassified acquirer for cigarette tax stamps returned or destroyed.

(5) Revenue Form 73A409, "Cigarette Evidence/Property Receipt", shall be used by law enforcement officers and the property owner to acknowledge custody of seized goods.

(6) Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler and Wholesaler's Monthly Report of Nonparticipating Manufacturer Cigarettes Sold in Kentucky", shall be used by a licensed cigarette wholesaler to report cigarette inventory, tax stamped reconciliation, and liability for cigarette administration and enforcement fee and to report cigarettes that were purchased from manufacturers and importers of cigarettes who did not sign the Master Settlement Agreement (nonparticipating manufacturers).

(7) Revenue Form 73A420(H), "Instructions for Monthly Report
of Cigarette Wholesaler" shall be used by cigarette wholesalers and nonparticipating manufacturers to file Revenue Form 73A420.

(8) Revenue Form 73A421, "Cigarette Inventory Floor Tax," shall be used by cigarette retailers or licensees to report cigarette inventories and the one-lime inventory floor tax.

(9) Revenue Form 73A422, "Monthly Report of Other Tobacco Products and Snuff," shall be used by cigarette licensees to report gross receipts from other tobacco products, total units of snuff sold, and tax liability.

(10) Revenue Form 73A401, "Cigarette Tax Credit Claim Wholesale Affidavit," shall be signed by a licensed cigarette wholesaler attesting that the reported tax evidence did not have the 27 cents surtax paid on it.


(2) Revenue Form 41A720A, "Schedule A, Apportionment and Allocation," shall be used by corporations doing business (which have property or payroll within) within and without of Kentucky to apportion and allocate net income to Kentucky in accordance with KRS 141.120.

(3) Revenue Form 41A720CC "Schedule CC, Coal Conversion Tax Credit," shall be used by corporations to compute the credit allowed by KRS 141.390 for coal purchased or converted for other fuels in an eligible heating facility as described by KRS 141.041(1).

(4) Revenue Form 41A720CI, "Schedule CI, Application for Coal Incentive Tax Credit," shall be used by taxpayers to request approval for the amount of credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the company to generate electricity.

(5) Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule," shall be used by a taxpayer whose common parent is a C corporation filing a consolidated return.

(6) Revenue Form 41A720CR-C, "Schedule CR-C, Pro Forma Federal Consolidated Return Schedule Continuation Sheet," shall be used by a taxpayer whose common parent is a C corporation filing a consolidated return.

(2) Revenue Form 41A720ES, "Form 720ES, 2005 Kentucky Corporation Income Tax Estimated Tax Voucher," shall be used by corporations to submit payments of estimated corporation income tax as required by KRS 141.044.

(8) [68] Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit," shall be used by corporations to determine the tax credits allowed to qualified businesses in accordance with KRS 154.45-100.

(9) [69] Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction," shall be used by individuals, corporations, fiduciaries, and partnerships to determine the credit allowed by KRS 141.0202.

(10) Revenue Form 41A720IQ, "Schedule BIO, Application and Credit Certificate of Income Tax Credit Biodiesel," shall be used by taxpayers claiming a Biodiesel tax credit.

(11) Revenue Form 41A720IQ-K1, "Schedule BIO-K1, Distributive Share of Approved Biodiesel and/or Biodiesel Tax Credit," shall be used by general partnerships to report distributive share of Biodiesel Tax Credit to general partners.

(12) Revenue Form 41A720KCR, "Schedule KCR, Kentucky Consolidated Return Schedule," shall be used by taxpayers filing a consolidated return where the common parent is a C corporation.

(13) Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule Continuation Sheet," shall be used for taxpayers filing a consolidated return whose common parent is a C corporation.

(14) Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule," shall be used by a C corporation with a current year net operating loss or net operating loss carry forward.

(15) Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit (Brownfields)," shall be used by a entity claiming a tax credit provided by KRS 141.415.
"Your Rights as a Kentucky Taxpayer."

**Revenue Form 41A720S2, *2005 [2004] Kentucky S Corporation Income and License Tax Forms and Instructions Packet*, provides in a single packet Form 720S, Kentucky S Corporation Income (and-License) Tax Return, other forms commonly used by S corporations in conjunction with Form 720S and instructions for filing these forms. The packet also contains [Revenue Form 62A3566, Kentucky-Intangible Property--Tax Return, and] a brochure entitled "Your Rights as a Kentucky Taxpayer."

**Revenue Form 41A720-S4, "Instructions for Filing Corporation Estimated Income Tax Voucher*, are instructions used by corporations to determine the amount of estimated corporation income tax that is required to be paid in accordance with KRS 141.644.

**Revenue Form 41A720-S16, "Schedule KREDA, Tax Credit Computation Schedule (for a KREDA Project of C Corporations)*, shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.347. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S17, "Schedule KREDA-T, Tracking Schedule for A KREDA Project*, shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (for a KREDA Project of a General Partnership [S-Corporations-and-Partnerships]*, shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.347. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (for a KIDA Project of C Corporations)*, shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.400. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for A KIDA Project*, shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (for a KIDA Project of a General Partnership [S-Corporations-and-Partnerships]*, shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.400. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (for a KIRA Project of C Corporations)*, shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.403. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for A KIRA Project*, shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (for a KIRA Project of a General Partnership [S-Corporations-and-Partnerships]*, shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.403. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (for a KJDA Project of C Corporations)*, shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.407. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for A KJDA Project*, shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, In-lieu-of credits and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (for a KJDA Project of a General Partnership [S-Corporations-and-Partnerships]*, shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.407. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S30, "Schedule TCS, Tax Credit Summary Schedule (for C Corporations with More than One [1] Economic Development Project)*, shall be used by corporations which have more than one (1) economic development project to reflect the amount of credit claimed for each project for the taxable year. Instructions shall be included on the back of the form.

**Revenue Form 41A720-S32, "Schedule KIRA-L, Tax Credit Computation Schedule, License Tax (For A KIRA Project of Corporations)*, shall be used by corporations which have entered into a revitalization agreement for a Kentucky Industrial Revitalization Act (KIRA) project to compute the allowable KIRA license tax credit.

**Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of [C Corporations]*, shall be used by [C Corporations who have] entered into a Kentucky Revvestment (KRA) Act project to compute the allowable KRA credit allowed against the Kentucky corporation income tax liability.

**Revenue Form 41A720-S36, "Schedule KIRA-L, Tax Credit Computation Schedule License Tax (For a KRA Project of Corporations)*, shall be used by C Corporations who have entered into a Kentucky Revvestment (KRA) Act project to compute the allowable KRA credit allowed against the Kentucky corporation income tax liability.

**Revenue Form 41A720-S37, "Schedule KIRA-T, Tracking Schedule For A KIRA Project*, shall be used by companies [C Corporations] who have entered into a Kentucky Revvestment (KRA) Act project to maintain a record of the balance of approved costs and income and license tax credits for the duration of the agreement.

**Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of C Corporations)*, shall be used by C Corporations who have entered into a Kentucky Economic Opportunity Zone (KEOZ) Act project to compute the allowable KEOZ credit allowed against the Kentucky corporation income tax liability.

**Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a General Partnership [S-Corporations-and-Partnerships]*, shall be used by any general [S-corporation-or] partnership which has entered into a service and technology agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed
against the Kentucky income tax liability.

(51) Revenue Form 41A270S42, "Schedule KEZJ-T, Tracking Schedule for a KEZJ Project", shall be used by any company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and income tax credits for the duration of the agreement.


(53) Revenue Form 41A720S, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income [and Licensee] Tax Return", shall be used by corporations to request a six (6) month extension of time to file the Kentucky Corporation Income and License Tax Return. Instructions shall be included on the back of the form.

(54) Revenue Form 41A725C, "Schedule CP Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return", shall be used by a single member individually-owned LLC to file corporation tax return in accordance with KRS 141.040.

(55) Revenue Form 41A725C, "Schedule CP Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return", shall be used by a single member individually-owned LLC to file corporation tax return in accordance with KRS 141.040.

(56) Revenue Form 41A725CP, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income [and Licensee] Tax Return", shall be used by corporations to request a six (6) month extension of time to file the Kentucky Corporation Income and License Tax Return. Instructions shall be included on the back of the form.

(57) Revenue Form 41A725S, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income [and Licensee] Tax Return", shall be used by corporations to request a six (6) month extension of time to file the Kentucky Corporation Income and License Tax Return. Instructions shall be included on the back of the form.

(58) Schedule KCR (Form 725), "Kentucky Nexus Consolidated Return Schedule", shall be used by a single member individually-owned LLC to file consolidated corporation tax return in accordance with KRS 141.040.

(59) Schedule KCR (Form 725), "Kentucky Nexus Consolidated Return Schedule", shall be used by a single member individually-owned LLC to file consolidated corporation tax return in accordance with KRS 141.040.

(60) Schedule KCR (Form 725), "Kentucky Nexus Consolidated Return Schedule", shall be used by a single member individually-owned LLC to file consolidated corporation tax return in accordance with KRS 141.040.

(61) Revenue Form 41A775, "Instructions for 2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return", shall be used by single member LLC individually owned to file the 2005 Kentucky corporation income tax return and related schedules.

(62) Revenue Form 41A775S, "2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return Forms and Instructions Packet", provides in a single packet Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 725, and instructions for filing these forms. The packet also contains a brochure entitled "Your Rights as a Kentucky Taxpayer".

(63) Revenue Form 41A775, "Instructions for 2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return", shall be used by single member LLC individually owned to file the 2005 Kentucky corporation income tax return and related schedules.

(64) Revenue Form 41A775S, "2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return Forms and Instructions Packet", provides in a single packet Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 725, and instructions for filing these forms. The packet also contains a brochure entitled "Your Rights as a Kentucky Taxpayer".

(65) Revenue Form 41A775, "Instructions for 2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return", shall be used by single member LLC individually owned to file the 2005 Kentucky corporation income tax return and related schedules.

(66) Revenue Form 41A775S, "2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return Forms and Instructions Packet", provides in a single packet Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 725, and instructions for filing these forms. The packet also contains a brochure entitled "Your Rights as a Kentucky Taxpayer".

(67) Revenue Form 41A775S, "2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return Forms and Instructions Packet", provides in a single packet Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 725, and instructions for filing these forms. The packet also contains a brochure entitled "Your Rights as a Kentucky Taxpayer".

(68) Revenue Form 41A775S, "2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return Forms and Instructions Packet", provides in a single packet Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 725, and instructions for filing these forms. The packet also contains a brochure entitled "Your Rights as a Kentucky Taxpayer".

(69) Revenue Form 41A775S, "2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return Forms and Instructions Packet", provides in a single packet Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 725, and instructions for filing these forms. The packet also contains a brochure entitled "Your Rights as a Kentucky Taxpayer".

(70) Revenue Form 41A775, "Instructions for 2005 Kentucky Single Member LLC Individually Owned Corporation Income Tax Return", shall be used by single member LLC individually owned to file the 2005 Kentucky corporation income tax return and related schedules.

Section 6. Health Care Provider Tax. (1) Revenue Form 73A060, "Health Care Provider Tax Return" shall be used by taxpayers to file the gross revenues and compute the tax for the health care provider tax.

(2) Revenue Form 73A060(1), "Instructions-Kentucky Health Care Provider Tax Return" shall be used by the taxpayers to determine if the service they provide is taxable, what tax rate is applicable, and which line to use for reporting.

(3) Revenue Form 73A06, "Kentucky Health Care Provider Application for Certificate of Registration" shall be completed by the taxpayer to register for the health care provider tax.

Section 7. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Instalment
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Agreement Request* shall be submitted to the Department of Revenue to request an installment agreement to pay tax due. (2) Revenue Form 40A100, "Application for Refund of Income Taxes" shall be presented to the Department of Revenue to request a refund of income taxes paid.

(3) Revenue Form 40A102, "2003 [2004] Application for Extension of Time to File Individual, General Partnership and Fiduciary Income Tax Returns for Kentucky," shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request as six (6) months extension to file the return or to remit payment of tax prior to the date the return is due.

(4) Revenue Form 40A125, "Request for Transfer of Individual Income Estimated Tax Payments to Corporation Income Estimated Tax," shall be used by an individual partner, shareholder, or member to transfer individual estimated tax to corporation estimated tax.

(5) Revenue Form 40A200 (PTE-WH), "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income," shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual whose net distributive share income is at least $1,000.

(6) (66) Revenue Form 40A201 (740NP-WH), "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report," shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual members.

(7) (66) Revenue Form 40A727, "Kentucky Income Tax Forms Requisitions" shall be used to order income tax forms.

(8) (66) Revenue Form 42A700, "Kentucky Individual Income Tax Return Audit Report" shall be used by the Department of Revenue to advise an individual of an adjustment to income tax credits on an individual income tax return which may result in an underpayment or overpayment. (9) (66) Revenue Form 42A701B, "Kentucky Individual Income Tax Return Audit Report" shall be issued by the Department of Revenue to advise an individual of an adjustment to income tax credits on an individual income tax return which may result in an underpayment or overpayment.

(10) (66) Revenue Form 42A705, "Kentucky Income Tax Withholding Audit Report" shall be used by the Department of Revenue to explain an adjustment to withholding tax reported and to the credits claimed on a withholding income tax return.

(11) (66) Revenue Form 42A740, "2005 [2004] Kentucky Individual Income Tax Return Full-Year Residents Only" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003, and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(12) (66) Revenue Form 42A740-EZ, "2005 [2004] Kentucky Individual Income Tax Return Single Persons With No Dependents" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003, and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.

(13) (66) Revenue Form 42A740-J (10-05[04]), "Schedule J, Kentucky Farm Income Averaging Schedule," shall be completed by individuals and attached to Form 740 to compute tax liability by averaging farm income for taxable years beginning December 31, 1997.

(14) (66) Revenue Form 42A740-L, "2000 Kentucky Income Tax Postcard" shall be used to mail labels and information to resident individuals.


(16) (66) Revenue Form 42A740-NP [42A740-S6], "2005 [2004] Kentucky Income Tax Return, Nonresident or Part Year Resident" shall be completed by part-year or full-year nonresident individuals to report taxable Income and income tax liability for taxable years beginning after December 31, 2003, and shall be filed within three and one-half (3 1/2) months after the close of the taxable year.


(22) (67) Revenue Form 42A740-ES, "2005 [2006] Individual Income Tax Kentucky Estimated Tax Voucher* shall be submitted to Department of Revenue by individuals with payment of quarterly estimated tax.

(23) [22] Revenue Form 42A740-S1, "2210-K, 2005 [2004] Underpayment of Estimated Tax by individuals shall be filed by individuals to request a Notice of Estimated tax penalty to compute and self assess an estimated tax penalty for 2005 [2004].

(24) (67) Revenue Form 42A740-S4, "2005 [2006] Instructions for Filing Estimated Tax Vouchers* shall be used to compute the amount of estimated tax owed for 2005 [2006].

(25) (67) Revenue Form 42A740-T, "2004 Kentucky Individual Income Tax TeleFile Tax Record and Instructions* shall be completed by resident individuals who choose to file their individual income tax return by telephone.


(27) Revenue Form 42A740-SP, "Amended Kentucky Individual Income Tax Return for Tax Year 2002, 2003, 2004* shall be completed by individuals and filed with the Department of Revenue to amend a previously filed return.


(31) (67) Revenue Form 42A740-TC, "Schedule TC, 2005 [2004 Tax Computation Schedule* shall be completed by individuals and attached to Form 740 to claim credit for tax paid to another state, the hiring of an unemployed person, purchasing (installing) recycling or composting equipment, and to compute tax liability using five (5) or ten (10) year averaging for 2004.

(32) (67) Revenue Form 42A740-UTC, "Schedule UTC, Unemployment Tax Credit" shall be completed by individuals and attached to Form 740, or Form 740-NP to provide Department for Employment Services Certificate Numbers in support of credit claimed for hiring an unemployed person.

(33) (67) Revenue Form 42A740-W8 [42A740-W8B], "2005 [2004] Individual Transmittal of Income Tax Information" shall be completed by employer and attached to Form 740 to report information for 2004. (34) (67) Revenue Form 42A740-KNOL, "Schedule KNOL, 2005 Kentucky Net Operating Loss Schedule* shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(35) (67) Revenue Form 42A740-S20, "1045-K, 2004 Ken-
tucky Net Operating Loss Application for Income Tax Refund* shall be used by individuals to compute and carry back a net operating loss deduction.

(35) [465] Revenue Form 42A740-S20(1), "Instructions - Form 1045-K" shall be provided to individuals to explain the purpose of Form 1045-K and provide line by line instructions on how to complete the form.

(36) [489] Revenue Form 42A740-S21, "4972-K, 2005 [2004] Kentucky Tax on Lump-Sum Distributions" shall be completed by individuals to compute tax liability on lump sum distributions and attached to their income tax return.

(37) [464] Revenue Form 42A740-S22, "8453-K, 2005 [2004] Kentucky Individual Income Tax Deduction for Electronic Filing" shall be completed, signed by individual taxpayer(s) and submitted to Department of Revenue in support of an electronically filed return.

(38) [466] Revenue Form 42A740-S23, "740-V, 2005 [2004] Kentucky Electronic Payment Voucher" shall be used by individual taxpayers and submitted to the Department of Revenue with payment of additional tax due on an electronically filed return.

(39) [467] Revenue Form 42A740-S24, "8869-K, 2005 Kentucky Education Savings Trust Credit" shall be used by individual taxpayers and submitted to the Department of Revenue to claim tuition tax credit on individual income tax return.

(40) [468] Revenue Form 42A741, "Form 741, 2005 [2004] Kentucky Fiduciary Income Tax Return* shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by the fiduciary of an estate or trust to report income and tax liability of the estate or trust.

(41) [469] Revenue Form 42A741(1), "Instructions - Form 741, 2005 [2004] Kentucky Fiduciary Income Tax Return* is an instruction guide provided by the Department of Revenue for completing the 2005 [2004] Form 741.

(42) [470] Revenue Form 42A741-D, "Schedule D, Form 741, 2005 [2004] Kentucky Capital Gains and Losses" shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(43) [471] Revenue Form 42A741(K-1), "Schedule K-1 Form 741, 2005 [2004] Kentucky Beneficiary's Share of Income, Deductions, Credits, etc." shall be filed by the fiduciary with Form 741 to report each beneficiary's share of income, deductions, credits, etc.

(44) [472] Revenue Form 42A765-GP, "Form 765-GP, 2005 [2004] Kentucky General Partnership Income Return* shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by a general partnership to report income, deductions and credits of a general partnership for 2005 [2004].

(45) [473] Revenue Form 42A765(1), "Instructions - Form 765-GP, 2005 [2004] Kentucky General Partnership Income Return* shall be provided to assist the general partnership in completing a general partnership return.

(46) [474] Revenue Form 765-GP (42A765-K-1), "Kentucky Schedule K-1 Form 765-GP [766], 2005 [2004] Partner's Share of Income, Credits, Deductions, etc." shall be filed by the general partnership with Form 765-GP [766] to report each general partner's share of income, deductions, credits, etc.

(47) [475] Revenue Form 42A765-S1, "2005 [2004] Kentucky Schedule K for General Partnerships with Economic Development Project(s)*, shall be used by general partnerships which have one (1) or more economic development projects to determine total general partner or partners share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects. Instructions shall be included on the back of the form.

(48) [476] Revenue Form 765-GP Instructions, "2005 Kentucky General Partnership Income Return Forms and Instructions* shall be used by general partnerships filing a Kentucky general partnership income return.

(49) [477] Revenue Form 42A800, "Withholding Kentucky Income Tax* Instructions for Employers and Withholding Tax Tables* shall be used by employers to determine the amount of Kentucky tax to withhold from wages.

(50) [466] Revenue Form 42A801, "Form K-1, Kentucky Employer's Return and Worksheet of Income Tax Withheld* shall be used by employers to report wages and taxes withheld for the filing period.

(51) [467] Revenue Form 42A801-D, "Form K-1, Amended Kentucky Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(52) [478] Revenue Form 42A801-E, "Form K-1E, Kentucky Employer's Return and Worksheet of Income Tax Withheld - Electronic Funds Transfer* shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.


(54) [480] Revenue Form 42A803, "Form K-3, Kentucky Employer's Return and Worksheet of Income Tax Withheld* shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(55) [481] Revenue Form 42A803-D, "Form K-3, Amended Kentucky Employer's Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period and annually reconcile wages and taxes reported.

(56) [482] Revenue Form 42A803-E, "Form K-3E, Kentucky Employer's Income Tax Withheld Return and Worksheet - Electronic Funds Transfer* shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.

(57) [483] Revenue Form 42A804, "Form K-4, Kentucky Revenue Cabinet Withholding Exemption Certificate* shall be used by employers to inform employers of the number of exemptions used to determine the amount of Kentucky tax withheld from wages.

(58) [484] Revenue Form 42A804-1-A, "Form K-4A, Kentucky Revenue Cabinet Withholding Exemptions for Exceptional Deductions* shall be used by employers to determine additional withholding exemptions.

(59) [485] Revenue Form 42A804-E, "Form K-4E, Special Withholding Exemption Certificate* shall be used by employees to inform employers of special tax exempt status.

(60) [486] Revenue Form 42A806, "Transmitter Report for Filing Kentucky Wage Statements" shall be used by employers to annually submit Forms W-2K-2 Wages and Tax Statements.

(61) [487] Revenue Form 42A807, "Form K-4FC, Fort Campbell Exemption Certificate* shall be completed by nonresident employees working at Fort Campbell Kentucky to inform employers of special tax exempt status.

(62) [488] Revenue Form 42A808, "Authorization to Submit Annual Employee Wage and Tax Statements Via Kentucky Department of Revenue Web Site", shall be used by employers to request authorization to annually submit wages and tax statements via Kentucky Department of Revenue Web site.

(63) [489] Revenue Form 42A809, "Certificate of Nonresidency" shall be used by employees to inform employers of special tax exempt status.

(64) [490] Revenue Form 42A810, "Nonresident's Affidavit - Kentucky Individual Income Tax* shall be used by individuals to submit sworn statement concerning residency status.

(65) [491] Revenue Form 42A811, "KREA Annual Report* shall be completed by employers to report KREA employee wage assessment fee information to the Department of Revenue.

(66) [492] Revenue Form 42A812, "KIDA Annual Report* shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(67) [493] Revenue Form 42A813, "KIDA Annual Report - 2004 * shall be completed by employers to report KIDA employee wage assessment fee information to the Department of Revenue.

(68) [494] Revenue Form 42A814, "KIRA Annual Report* shall be completed by employers to report KIRA employee wage assessment fee information to the Department of Revenue.

(69) [495] Revenue Form 42A815, "Withholding Tax Refund Application* shall be completed by employers to request a refund of withholding tax paid.

(70) [496] Revenue Form 42A816, "KEOZ Annual Report*
shall be completed by employers to claim KEOZ wage assessment fees.
(71) Revenue Form 42A820, "Address Correction Request", shall be used by employers to verify correct mailing address for withholding returns.
(72) Revenue Form 42D003, "Kentucky Order Form for W-2/K-2", shall be used by employers to order wage and tax statements.
(73) Revenue Form 42F006, "Tax Rate Reduction and Family Size tax Credit", shows the tax rate reduction and family size tax credit available for individual tax payers effective for tax years beginning January 1, 2005.

Section 8. Inheritance Tax - Required Forms. (1) Revenue Form 92A101, "Kentucky Nonresident Inheritance and Estate Tax Return and Instructions", shall be used by the personal representative or beneficiary of a nonresident estate to establish the inheritance and estate tax due the Commonwealth.
(2) Revenue Form 92A110, "Real Estate Data Report", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purposes.
(3) Revenue Form 92A120, "Kentucky Resident Inheritance and Estate Tax Return Packet", shall be used by the personal representative or beneficiary of a resident estate to establish the inheritance and estate tax due the Commonwealth.
(4) Revenue Form 92A120L, "Instructions 92A120 Packet", is an instruction booklet to be used by the personal representative or beneficiary of a resident estate to prepare the appropriate inheritance and estate tax return.
(5) Revenue Form 92A120S, "Inheritance and Estate Tax Short Form Packet" shall be used by the personal representative or beneficiary of a resident estate to establish the appropriate inheritance and estate tax due the Commonwealth.
(6) Revenue Form 92A120X, "Kentucky Spousal Inheritance Tax Return", shall be used by the personal representative or beneficiary of a resident estate to establish there is no inheritance and estate tax due the Commonwealth.
(7) Revenue Form 92A121, "Acceptance of Inheritance & Estate Tax Return", shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify that all death taxes due the Commonwealth have been paid.
(8) Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.
(9) Revenue Form 92A201, "Kentucky Inheritance and Estate Tax Return - No Tax Due", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish that there is no inheritance and estate tax due the Commonwealth.
(10) Revenue Form 92A202, "Kentucky Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the estate tax due the Commonwealth.
(11) Revenue Form 92A204, "Real Estate Valuation Information Sheet", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purposes.
(12) Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)" shall be used by the personal representative or beneficiary of a small or uncomplicated resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.
(13) Revenue Form 92A500, "Notice of Insurance Payment", shall be used by insurance companies to notify the Department of Revenue when proceeds of a life insurance policy are paid following a death.
(14) Revenue Form 92A526, "Notice of Benefits Paid by Employer/Insurance Company", shall be used by insurance companies to notify the Department of Revenue when proceeds of a life insurance policy are paid following a death.
(15) Revenue Form 92A528, "Election to Defer the Payment of Inheritance Tax through Installments", shall be used by the beneficiaries or beneficiaries of an estate to defer the payment of inheritance tax through installments.
(16) Revenue Form 92A529, "Notice of Agricultural and Horticultural Inheritance Tax Lien", shall be used to request the county clerk place a lien on a particular piece of real estate due to the personal representative, on behalf of an estate, electing the use of agricultural or horticultural value.
(17) Revenue Form 92A530, "Certificate of Release of Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk release the five (5) year lien that guaranteed collection of tax if terms of agreement not met.
(18) Revenue Form 92A531, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk do a partial release of the five (5) year lien that guaranteed collection of tax if terms of agreement not met.
(19) Revenue Form 92A532, "Receipt of Inheritance and Estate Taxes", is a receipt given to taxpayer when tax payment is received in the office.
(20) Revenue Form 92A536, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", shall be used by personal representative or beneficiary to elect to qualify terminable interest property or power of appointment property if proper criteria exists.
(21) Revenue Form 92F001, "Blanket Lien Release", notice shall be used to access lock boxes without requiring written consent or presence of the Department of Revenue or local PVA official and provides a blanket lien release on all property owned by any decedent.
(22) Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", shall be used by the general public for information purposes concerning Kentucky inheritance and estate tax.

Section 9. Insurance Tax - Required Forms. (1) Revenue Form 74A100, "Insurance Premiums Tax Return", shall be used by foreign life insurance companies, stock insurance companies other than life, and foreign mutual companies other than life to report liability for foreign life insurance tax, other than life insurance tax, fire insurance tax and reinsurance taxes and fees.
(2) Revenue Form 74A101, "Insurance Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", shall be used by domestic mutual, domestic mutual fire or cooperative and assessment fire insurance companies to report liability for premiums tax on amounts paid to authorized and unauthorized reinsurance companies.
(3) Revenue Form 74A105, "Unauthorized Insurance Tax Return", shall be used by insurers not authorized to conduct business in the Commonwealth of Kentucky by the Department of Insurance to report liability for insurance premiums tax.
(4) Revenue Form 74A106, "Insurance Premiums Tax Return - Captive Insurer", shall be completed by domestic and foreign insurance companies to report captive insurance tax.
(5) Revenue Form 74A110, "2006 [2006] Kentucky Estimated Insurance Premiums Tax", shall be used by insurance companies to remit estimated premiums tax payments.
(6) Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", shall be used by domestic life insurance companies to make an irrevocable election to pay state capital and reserves tax, premiums tax, and the county and city capital and reserves tax or to pay state premiums tax and local government premiums tax.
(7) Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurer", shall be used by domestic mutual, cooperative and assessment fire insurers to report liability for insurance premium surcharge.
(8) Revenue Form 74A118, "Monthly Insurance Surcharge Report", shall be used by domestic, foreign and alien insurers, other than life and health insurers, to report liability for insurance premium surcharge.

Receipts*, shall be used by the county clerks to report the county's liability for the legal process tax and spouse abuse shelter fund.

Section 11. Marijuana and Controlled Substance - Required Forms. (1) Revenue Form 72A020, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", shall be used by the Kentucky Department of Revenue to provide persons ordering marijuana and controlled substance tax stamps with the appropriate instructions on affixing the stamps.

(2) Revenue Form 72A070, "Notice of Seizure and Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", shall be used by law enforcement officials to notify the Kentucky Department of Revenue and county clerk of the seizure of marijuana and other controlled substances.

(3) Revenue Form 72A0703, "Marijuana or Controlled Substance Stamps Order Form", shall be used by taxpayers to order stamps for marijuana or controlled substances.

Section 12. Motor Fuels - Required Forms. (1) Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the public boat dock refund applicant was entitled.

(2) Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", shall be used by a public boat dock to make application.

(3) Revenue Form 72A006, "Motor Fuel Tax Refund Application for Public Boat Dock", shall be used by public boat dock refund applicant to make application for refund of liquid fuels tax on purchases of liquid fuel delivered directly to the fuel tanks attached to the watercraft and used exclusively in watercraft motors.

(4) Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", shall be used by an approved surety to establish surety obligation upon the payment of all taxes, penalties, and fines for which the motor fuel tax refund applicant may become liable under KRS 138.344 to 138.355.

(5) Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", shall be used by licensed gasoline or special fuels dealers to report and remit monthly petroleum storage tank environmental assurance fee amounts due.

(6) Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", shall be used by the KRC to issue Kentucky Motor Fuels Tax Refund Permits.

(7) Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", shall be used by Kentucky Motor Fuels Tax Refund Permit holders to apply for refund of Kentucky motor fuel tax paid on nonhighway motor fuels.

(8) Revenue Form 72A054-A, "Kentucky Motor Fuels Tax Refund Invoice", shall be used by licensed Kentucky gasoline or special fuels dealers to authorize purchases of nonhighway agricultural use or nonhighway special fuels for refund of Kentucky motor fuel tax paid.

(9) Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the aviation gasoline refund applicant was entitled.

(10) Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Aircraft", shall be used by aviation gasoline refund applicant to make application for refund of Kentucky tax paid on gasoline used in operation of aircraft.

(11) Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", shall be used by aviation gasoline tax refund applicants seeking approval to receive a refund of aviation gasoline tax.

(12) Revenue Form 72A071, "Motor Fuels Tax Refund Bond - City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation or Taxicab", shall be used by a surety company authorized to do business in Kentucky to establish surety obligation upon the payment to the Commonwealth of any refunds to which a city and suburban bus, nonprofit bus, senior citizen transportation or taxicab refund applicant was entitled.

(13) Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation and Taxicab Companies", shall be used by refund applicants to make application for refund of Kentucky tax paid on fuel used in the operation of city and suburban bus companies, nonprofit bus companies, senior citizen transportation or taxicab companies.

(14) Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxicab", shall be used by qualifying applicants to make application for approval to receive a refund of tax on motor fuels consumed by city and suburban buses, nonprofit buses, senior citizen transportation and taxicab companies.

(15) Revenue Form 72A075, "Receipts of Unreported Alcohol or Other Additives", shall be used by licensed gasoline dealers to report receipt of unreported alcohol or other additives.


(17) [449] Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", shall be used by licensed gasoline or special fuels dealers to make claim for accountable loss of motor fuel.

(18) [447] Revenue Form 72A080, "Report of Gasoline Received from Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report receipt of tax free gasoline from licensed Kentucky dealers on the gasoline dealer's monthly report.

(19) [448] Revenue Form 72A081, "Report of Gasoline Imported from Other States" shall be used by licensed gasoline dealers to report gasoline imported from other states, on the gasoline dealer's monthly report.

(20) [449] Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky - Kentucky Tax Paid to Suppliers", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.

(21) [469] Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky - Kentucky Tax Paid by Suppliers", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.

(22) [444] Revenue Form 72A082, "Report of Gasoline Imported", shall be used by licensed gasoline dealers to report gasoline imported, on the gasoline dealer's monthly report.

(23) [459] Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", shall be used by licensed gasoline dealers to report gasoline received from terminal or refinery, on the licensed gasoline dealer's monthly report.

(24) [458] Revenue Form 72A084, "Report of Gasoline Exported", shall be used by licensed gasoline dealers to report gasoline exported, on the gasoline dealer's monthly report.

(25) [464] Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report gasoline sold to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(26) [465] Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", shall be used by licensed gasoline dealers to report gasoline withdrawals from terminal storage, on the gasoline dealer's monthly report.

(27) [466] Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report withdrawals of gasoline to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(28) [467] Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", shall be used by licensed gasoline dealers to report withdrawals of gasoline exported or sold for export, on the gasoline dealer's monthly report.

(29) [468] Revenue Form 72A089, "Licensed Gasoline Dealers Monthly Report", shall be used by licensed gasoline dealers to report and remit monthly gasoline tax.

(30) [469] Revenue Form 72A090, "Gasoline Dealers Monthly Terminal Storage Report", shall be used by licensed gasoline deal-
ers to report monthly terminal storage activity, on the gasoline
distributor's monthly report.

(31) [(360)] Revenue Form 72A091, "Gasoline Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by
gasoline dealers to claim a credit for gasoline sold for agricultural
purposes to holders of Kentucky motor fuels tax refund permits.

(32) [(361)] Revenue Form 72A098, "Transporter's Report of Motor Fuel Delivered", shall be used by licensed transporters to
report monthly motor fuel deliveries.

(33) [(362)] Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", shall be used by licensed gaso-
line dealers to report and remit estimated gasoline tax monthly
payments.

(34) [(363)] Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Gover-
mment", shall be used by licensed special fuels dealers to report
special fuels sales to U.S. government, on the special fuels
distributor's monthly report.

(35) [(364)] Revenue Form 72A110, "Certification of Special Fuels Nonhighway Use", shall be used by qualifying entities to
certify the nonhighway use of special fuels. The certification shall be
used by a licensed special fuels dealer.

(36) [(365)] Revenue Form 72A124, "Report of Kerosene Re-
ceived and Blended", shall be used by licensed special fuels dealers
to report kerosene received and blended, on the licensed special
fuels dealer's monthly report.

(37) [(366)] Revenue Form 72A127, "Special Fuels Dealer's
Schedule of Sales Qualifying for State or Local Government
Agency Credit", shall be used by a licensed special fuels dealer to
list sales of special fuels to state or local government agencies
for nonhighway special fuel use for a specific monthly period.

(38) [(367)] Revenue Form 72A128, "Special Fuels Dealer's
Schedule of Sales Qualifying for Nonprofit Religious, Charitable
or Educational Organization Credit", shall be used by a license-
special fuels dealer to list sales of special fuels to nonprofit religious,
charitable or educational organizations for nonhighway special fuels
use for a specific monthly period.

(39) [(368)] Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit (Undyed Diesel)", shall be used by licensed special fuels dealers to report special fuels sold for commercial off-road use to holders of Ken-
tucky motor fuels tax refund permits who issued the dealer a
Certificate of Special Fuels Nonhighway Use, Form 72A110.

(40) [(369)] Revenue Form 72A131, "Special Fuels Dealer's Schedule of Sales Qualifying for Agricultural Tax Credit", shall be
used by a licensed special fuels dealer to list sales of special fuels
to motor fuels tax refund permit holders for agricultural special
fuels use for a specific monthly period.

(41) [(370)] Revenue Form 72A132, "Special Fuels Dealer's
Schedule of Sales Qualifying for Residential Heating Tax Credit", shall be used by a licensed special fuels dealer to list sales of special
fuels to consumers for heating a personal residence for a
specific monthly period.

(42) [(371)] Revenue Form 72A135, "Application for Kentucky Motor Fuel Tax Refund Permit", shall be used by a person desiring
to qualify for a refund of motor fuel excise tax paid for nonhigh-
way use.

(43) [(372)] Revenue Form 72A138, "Licensed Special Fuels Dealer's Monthly Report", shall be used by a licensed special
fuels dealer to report the total special fuels gallons received and dis-
tributed for a specific monthly period.

(44) [(373)] Revenue Form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", shall be used by a
licensed special fuels dealer to list special fuels shipments
originating in Kentucky from another licensed special fuels dealer
for a specific monthly period.

(45) [(374)] Revenue Form 72A154, "Report of Special Fuels
Imported from Other States", shall be used by a licensed special
fuels dealer to list every special fuels shipment imported into Ken-
tucky from other state terminals on which the Kentucky special fuels
excise tax was not precolllected by the supplier for a specific
monthly period.

(46) [(375)] Revenue Form 72A154-P, "Purchaser's Report Spe-
cial Fuels Imported-Kentucky Tax Paid to Supplier", shall be used
by a licensed special fuels dealer to list every special fuels ship-
ment imported into Kentucky from other state terminals on which the
Kentucky special fuels excise tax was paid to the supplier for a
specific monthly period.

(47) [(376)] Revenue Form 72A154-S, "Supplier's Report Special Fuels Imported-Kentucky Tax Paid by Supplier", shall be used by a
licensed special fuels dealer to list every special fuels shipment
imported into Kentucky from other state terminals on which the
Kentucky special fuels excise tax was charged to the dealer's cus-
tomer for a specific monthly period.

(48) [(377)] Revenue Form 72A155, "Report of Special Fuels Exported or Sold for Export", shall be used by a licensed special
fuels dealer to list every shipment exported to another state for a
specific monthly period.

(49) [(378)] Revenue Form 72A156, "Report of Special Fuels
Sold to Licensed Kentucky Dealers", shall be used by a licensed special
fuels dealer to report all special fuels shipments sold to
other licensed special fuels dealers for a specific monthly period.

(50) [(379)] Revenue Form 72A159, "Report of Special Fuels
Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by a licensed special fuels dealer to re-
port all special fuels shipments sold to a valid Motor Fuels Tax
Refund Permit holder for exclusive use by railroad companies for
nonhighway purposes for a specific monthly period.

(51) [(380)] Revenue Form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", shall be used by a licensed
special fuels dealer to report the special fuels tax liability for a
specific monthly period equal to ninety-nine percent (99%) percent of
the applicable tax due for remittance by the due date.

(52) [(381)] Revenue Form 72A161, "Monthly Report Liquefied Petroleum Gas Dealer", shall be used by a licensed liquefied
petroleum gas dealer to report all gations of liquefied petroleum gas
dispensed into the fuel tanks of licensed motor vehicles for a
specific monthly period.

(53) [(382)] Revenue Form 72A162, "Report of Liquefied Petroleum Gas Motor Fuels", shall be used by a licensed liquefied
petroleum gas dealer to list every shipment of liquefied petroleum gas
placed into the fuel tank of a licensed motor vehicle for a
specific monthly period.

(54) [(383)] Revenue Form 72A163, "Application for Liquefied Petroleum Gas Motor Fuels Tax Exemption Permit", shall be used by
any entity desiring to obtain an exemption from the motor fuels
excise tax on liquefied petroleum gas to provide data regarding his
cARBuration system to insure compliance with the standards estab-
lished by the Natural Resources and Environmental Protection
Cabinet.

(55) [(384)] Revenue Form 72A170, "Special Fuels Dealer's Monthly Terminal Storage Report", shall be used by a licensed special
fuels dealer to report the change in the cumulative amount of special
terminal storage and disbursement activity for a specific monthly period.

(56) [(385)] Revenue Form 72A171, "Report of Special Fuels
Imported", shall be used by a licensed special fuels dealer to list all
shipments imported into Kentucky from other states and placed
into Kentucky terminal storage for a specific monthly period.

(57) [(386)] Revenue Form 72A172, "Report of Special Fuels
Received from Terminal or Refinery", shall be used by a licensed special
fuels dealer to list all shipments received from other Ken-
tucky terminals and placed into Kentucky terminal storage for a
specific monthly period.

(58) [(387)] Revenue Form 72A173, "Report of Special Fuels
Withdrawals to Licensed Kentucky Dealers", shall be used by a
licensed special fuels dealer to list all shipments withdrawn to other
licensed special fuels dealers for a specific monthly period.

(59) [(388)] Revenue Form 72A174, "Report of Special Fuels
Withdrawals Exported or Sold for Export", shall be used by a li-
censed special fuels dealer to provide a list of every shipment
withdrawn from terminal storage and exported to another state for a
specific monthly period.

(60) [(389)] Revenue Form 72A175, "Report of Special Fuels
Withdrawals from Terminal Storage", shall be used by a licensed
special fuels dealer to provide total gallon withdrawals from his
terminal storage facility or facilities for a specific monthly period.

(61) [(390)] Revenue Form 72A200, "Special Fuels Dealer's
Schedule of Dyed Diesel Credits and Tax Due", shall be used by
licensed special fuels dealers to report the total dyed diesel gallons received and distributed for a specific monthly period.

(62) [643] Revenue Form 72A210, "Report of Dyed Diesel Received from Licensed Kentucky Dealers", shall be used by licensed special fuels dealer to list every dyed diesel shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.

(63) [643] Revenue Form 72A211, "Report of Dyed Diesel Imported from Other States", shall be used by licensed special fuels dealer to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(64) [660] Revenue Form 72A212, "Report of Kerosene and Other Receipts Reported and/or Blended with Dyed Diesel", shall be used by licensed special fuels dealers to report kerosene and any other receipts received and/or blended with dyed diesel.

(65) [643] Revenue Form 72A220, "Dyed Diesel Monthly Terminal Storage Report", shall be used by licensed special fuels dealers to summarize all dyed diesel Kentucky terminal receipts and disbursements activity for a specific monthly period.

(66) [687] Revenue Form 72A221, "Report of Dyed Diesel Imported", shall be used by licensed special fuels dealers to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(67) [665] Revenue Form 72A222, "Report of Dyed Diesel Received from Terminal or Refinery", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel received from a terminal or refinery located in Kentucky into terminal storage.

(68) [667] Revenue Form 72A223, "Report of Dyed Diesel Withdrawals to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage going to licensed Kentucky dealers.

(69) [686] Revenue Form 72A224, "Report of Dyed Diesel Withdrawals Exported or Sold for Export", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals either exported or sold for export from terminal storage.

(70) [668] Revenue Form 72A225, "Report of Dyed Diesel Withdrawals from Terminal Storage", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage.

(71) [704] Revenue Form 72A230, "Report of Dyed Diesel Exported or Sold for Export", shall be used by licensed special fuels dealers to report dyed diesel gallons exported or sold for export into another state.

(72) [623] Revenue Form 72A231, "Report of Dyed Diesel Sold to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers to report dyed diesel sold to licensed Kentucky dealers.

(73) [769] Revenue Form 72A232, "Statement of Claim for Accountable Loss of Dyed Diesel", shall be used by licensed special fuels dealers to report approved accountable loss of dyed diesel gallons.

(74) [743] Revenue Form 72A233, "Report of Dyed Diesel Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by licensed special fuels dealers to report dyed diesel sold for exclusive use by railroad companies for nonhighway purposes.

(75) [744] Revenue Form 72A224, "Licensed Special Fuels Dealer's Monthly Report of Dyed Diesel Sales to U.S. Government", shall be used by licensed special fuels dealers to report dyed diesel sold to the U.S. government.

(76) [769] Revenue Form 72A240, "Special Fuels Dealer's Schedule of Dyed Diesel Sales Qualifying for Nonhighway Use Tax Credit", shall be used by licensed special fuels dealers to report dyed diesel sold for nonhighway use.

(77) [746] Revenue Form 72A300, "Tax Registration Application for Motor Fuels License", shall be used by an applicant to register for a gasoline dealer's, special fuels dealer's, liquefied petroleum gas dealer's or motor fuel transporter's license.

(78) [777] Revenue Form 72A301, "Motor Fuels License Bond", shall be executed by a corporation authorized to transact business in Kentucky on behalf of a licensee to ensure payment of taxes, penalties, and interest for which a dealer or transporter may become liable.

(79) [768] Revenue Form 72A302, "Motor Fuels License", shall be used by the Department of Revenue to issue a license to the qualified applicant in gasoline, special fuels, motor fuels transporter, or liquefied petroleum gas dealer.

(80) [779] Revenue Form 72A303, "Election Application/Cancellation Form", shall be used by gasoline and special fuels dealers to elect to pledge a financial instrument other than a corporate surety bond.

Section 13. Motor Vehicle Usage Tax - Required Forms. (1) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", shall be presented to the county clerk to establish taxable value upon the first registration or transfer of a motor vehicle for motor vehicle usage tax purposes.

(2) Revenue Form 71A101, "Motor Vehicle Usage Tax Multi-Purpose Form", shall be presented to the county clerk by a vehicle owner to:
(a) Claim one (1) of several exemptions;
(b) Establish "retail price" if prescribed by the department; or
(c) Establish "retail price" of new vehicles with equipment or adaptive devices added to facilitate or accommodate handicapped persons.

(3) Revenue Form 71A102, "Questionnaire", shall be completed by selected motor vehicle buyers and sellers providing specific information regarding a vehicle transaction.

(4) Revenue Form 71A103, "Application for Protective Refund of Motor Vehicle Usage Tax Used Vehicles Purchased Out of State" shall be completed in order to submit a claim for trade-in credit on a used motor vehicle purchased outside Kentucky.

(5) Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification" shall be presented to the county clerk by a certified resident of an enterprise zone to claim exemption from the motor vehicle usage tax upon the first registration or transfer of a motor vehicle.

(6) Revenue Form 71A183, "Affidavits to Support Interstate Motor Carrier Motor Vehicle Usage Tax Exemption", shall:
(a) Be used by the nonresident owner of a motor vehicle which is:
1. Based in a state other than Kentucky; and
2. Required to be registered in Kentucky pursuant to KRS 186.145; and
(b) State that the vehicle:
1. Will be used primarily in interstate commerce; and
2. Pursuant to KRS 138.470(5), is exempt from the motor vehicle usage tax.

(7) Revenue Form 71A174, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Weekly Report", shall be submitted to the Department of Revenue by a county clerk as a recapitulation form to list all motor vehicle usage tax receipts, adjusted for corrections and commissions for a given week.

(8) Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Interim Report", shall be submitted to the Department of Revenue by a county clerk to report motor vehicle usage tax collection if an extension of time to file the computer generated weekly recapitulation report is requested.

(9) Revenue Form 72A2007, "Affidavit of Nonhighway Use", shall be used by taxpayers attesting that a motor vehicle will not be operated upon Kentucky's public highways.

(10) Revenue Form 73A054, "Kentucky Application For Dealer Loaner/Rental Vehicle Tax", shall be used by motor vehicle dealers to register to participate in the Loaner/Rental Vehicle Tax program.

(11) [603] Revenue Form 73A055, "Monthly Report For Dealer Loaner/Rental Vehicle Tax", shall be used by motor vehicle dealers to report tax due on vehicles dedicated for use in the Loaner/Rental Vehicle Tax.

(12) [144] Revenue Form 73A070, "Motor Vehicle Usage Tax Request for Extension of Deposit/ACH Call-in", shall be used by county clerks for extension of ACH call-in deposits.

Section 14. Property Tax - Required Forms. (1) Revenue Form
61A200, "Public Service Company Property Tax Return and Instructions", shall be filed by public service companies with the Department of Revenue reporting company name, location and other pertinent filing information.

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

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

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

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

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

(7) [12] Revenue Form 61A200(G), "Report of Capital Stocks", shall be filed by public service companies with the Department of Revenue, reporting an analysis of their capital stocks as of the end of the taxable year.

(8) [14] Revenue Form 61A200(I), "Report of Funded Debt", shall be filed by public service companies with the Department of Revenue, reporting an analysis of their debt as of the end of the taxable year.

(9) [16] Revenue Form 61A200(I), "Business Summary by Taxing District", shall be filed by public service companies with the Department of Revenue, reporting a summary of the business activity within each taxing district.

(10) [18] Revenue Form 61A200(U), "Property Summary by Taxing District", shall be filed by public service companies with the Department of Revenue reporting a summary of the amount of operating and nonoperating property owned or leased in this state, by each county, city and special district.

(11) [19] Revenue Form 61A200(X), "Operating Property Listing by Taxing Jurisdiction/Operating and Nonoperating Property [Debenture]", shall be filed by public service companies with the Department of Revenue, reporting an inventory of the amount and kind of operating property, owned or leased, located in this state, for each county, city and special taxing district.

(12) [20] Revenue Form 61A200(K), "Nonoperating/Nonutility Property Listing by Taxing Jurisdiction [Debenture]", shall be filed by public service companies with the Department of Revenue reporting an inventory of the amount and kind of nonoperating property owned or leased, located in this state, for each county, city and special taxing district.

(13) [21] Revenue Form 61A200(L), "Report of Allocation Factors/Operating and Noncarrier Property [and Business Factors] for All Interstate Companies", shall be filed by Interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(14) [22] Revenue Form 61A200(M), "Report of Property and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by Interstate railroad and sleeping car companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(15) [23] Revenue Form 61A200(N), "Report of Leased Real Property/Kentucky Operating Leases, Personal Property, and System Report of Leased Property", shall be filed by public service companies with the Department of Revenue, reporting all leased property and the terms of the lease.

(16) [24] Revenue Form 61A200(O), "Railroad Private Car Mileage Report", shall be filed by railroad car line companies with the Department of Revenue reporting name and address of the company and the mileage in Kentucky.

(17) [25] Revenue Form 61A200(P), "Report of Cable Television", shall be filed by public service companies with the Department of Revenue, reporting the number of subscribers.

(18) [26] Revenue Form 61A200(Q), "Supplemental Report of Operations for Contained and Residential Landfills", shall be filed by landfills with the Department of Revenue, reporting historic, current and projected operational information.

(19) [27] Revenue Form 61A200(R), "Report of Property Subject to the Pollution Control Tax Exemption", shall be filed by public service companies with the Department of Revenue, reporting certified pollution control equipment, the original cost and the net book value.

(20) [28] Revenue Form 61A200(S), "Filing Requirements for Commercial Passenger and Cargo Airlines", shall be filed by passenger and cargo airline companies with the Department of Revenue, reporting statistical information about all owned and leased aircraft.

(21) [29] Revenue Form 61A200(T), "Report of Roessler Leasing Form", shall be filed by cable television and telephone companies leasing access to or from other providers, with the Department of Revenue, reporting company name and address.

(22) [30] Revenue Form 61A200(U), "Industrial Revenue Bond Property", shall be filed by a public service company to list real and tangible personal property purchased with an industrial revenue bond.

(23) [31] Revenue Form 61A200(W), "Wireless Telephone Provider Report", shall be filed by wireless telephone providers operating in Kentucky to report spectrum data for those companies operating totally or partially in Kentucky.

(24) Revenue Form 61A202, "2006 [2006] Public Service Company Property Tax Return for Railroad Car Line" shall be filed by railroad car line companies with the Department of Revenue, classifying the railcars by type and reporting cost, age and mileage for each railcar.


(26) [33] Revenue Form 61A207, "2006 [2006] Nonresident Watercraft Property Tax Return", shall be filed by nonresident watercraft owners which do not fall under the filing requirements of KRS 136.120, with the Department of Revenue, reporting the watercraft's book value, original cost and total and Kentucky mileage.

(27) Revenue Form 61A207I, "Instructions - 61A207", shall be used to assist taxpayers who are required to file revenue form 61A207.

(28) Revenue Form 61A208, "2005 Public Service Company Property Tax Return Coin-Operated Telephones", shall be filed by owners of coin-operated telephones with the Department of Revenue, reporting an activity summary and copies of the annual report to stockholders and Kentucky financial statements.

(29) Revenue Form 61A209, "Public Service Company Sales", shall be filed by public service companies with the Department of Revenue, reporting any full or partial sale or purchase of assets of the public service company (a taxpayer, which has sold or bought a public service company, with the Department of Revenue in order to assist in the determination of fair cash value for ad valorem tax purposes.

(30) Revenue Form 61A210, "Cable Television Company Sales", shall be filed by a taxpayer, which has sold or bought a cable television company, with the Department of Revenue in order to assist in the determination of fair cash value for ad valorem tax purposes.

(31) Revenue Form 61A211, "Public Service Company Schedule of Owned and/or Leased 2004 Motor Vehicles with Kentucky Stes as of January 1, 2006 assessment date", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky (to assure proper credit for previously assessed motor vehicles).

(32) Revenue Form 61A211I, "Instructions for Revenue
Form 61A211, November, 2004 shall provide Instructions for completing "Revenue Form 61A211, Public Service Company Schedule of Owned and/or Leased Motor Vehicles with Kentucky Situs."  
(28) [391] Revenue Form 61A230, "Notice of Assessment for Public Service Company", shall be sent by the Department of Revenue to the taxpayer notifying him of the final assessment of the public service company property.  
(29) [390] Revenue Form 61A240, "Notice of Assessment for Public Service Company", shall be sent by the Department of Revenue notifying him of a tentative assessment of the public service company property. This notice also informs the taxpayer of the protest period.  
(30) [341] Revenue Form 61A250, "Notice of Assessment for Public Service Company on the Taxpayer's Claim of Value", shall be sent by the Department of Revenue notifying the taxpayer of his claim of assessed value on public service company property.  
(31) [630] Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.  
(32) Revenue Form 61A500, "2006 Tangible Personal Property Tax Return and Instructions for Communication Service Providers and Multi-channel Video Program Service Providers", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, reporting all tangible personal property.  
(33) Revenue Form 61A500(V), "Report of Total Personal Tangible Property in Kentucky", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky original cost, depreciation and net book value of each class of tangible personal property.  
(34) Revenue Form 61A500D, "Summary of Gross Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky original cost by taxing jurisdiction.  
(35) Revenue Form 61A500(U), "Summary of Reported Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky reported value by taxing jurisdiction.  
(36) [835] Revenue Form 61A507, "Distilled Spirits or Nonresident Watercraft Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of nonresident watercraft personal property on counties, schools and special districts to bill for local property taxes.  
(37) [841] Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Department of Revenue, reporting the report inventory as of January 1.  
(38) [385] Revenue Form 61A508-S1, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.  
(39) [386] Revenue Form 61A508-S2, "Schedule 2 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting average per barrel storage cost.  
(40) [379] Revenue Form 61A508-S3, "Schedule 3 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the date of sale or purchase, the number of barrels, age and the price.  
(41) [386] Revenue Form 61A508-S4, "Schedule 4", shall be filed by distilleries with the Department of Revenue, reporting the fair cash value for case goods and other Inventory reported on form 61A508.  
(42) Revenue Form 61A509, "Distilled Spirits or Telecommunications Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of distilled spirits and telecommunications personal property.  
(43) Revenue Form 62A006, "Motor Boat Tax and/or Registration Renewal Notice" shall be issued by the Department of Revenue to notify motor boat owners of their ad valorem property tax liabilities and registration renewal.  
(44) [406] Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice" shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.  
(45) [441] Revenue Form 62A007S5, "Delinquent Motor Vehicle/Boat Property Tax Notice - Second Notice" shall be issued by the Department of Revenue to notify motor vehicle and boat owners of their delinquent ad valorem property tax liabilities.  
(46) [402] Revenue Form 62A008, "Motor Vehicle Tax Notice" shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities.  
(47) [403] Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.  
(48) [403] Revenue Form 62A013, "Application for Assessment Moratorium Certificate", shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administering agency of the county in which the property is located, thirty (30) days prior to restoration or repair.  
(49) [466] Revenue Form 62A016, "1999 Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.  
(50) [466] Revenue Form 62A016, "Quilatus" shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.  
(51) [477] Revenue Form 62A017, "County Clerk's Claim for Calculating Motor Vehicle and Boat Bills" shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and determine the county clerk's compensation for making tax bills.  
(52) [466] Revenue Form 62A018, "School Taxing Jurisdiction - Motor Vehicle and Watercraft Property Tax Rate" shall be completed by the Department of Revenue to list the motor vehicle and watercraft property tax rates for each school taxing jurisdiction.  
(53) [446] Revenue Form 62A019, "Distributions of Ad Valorem Tax to the Fiscal Courts" shall be completed by the Department of Revenue to list the fiscal year ad valorem property tax distributions to the various county fiscal courts.  
(54) [560] Revenue Form 62A020, "Intercounty Property Tax Collections", shall be completed by the Department of Revenue to list distributions of ad valorem property tax made to individual taxing jurisdictions.  
(55) [561] Revenue Form 62A023, "Application for Exemption from Property Taxation" shall be filed by organizations, other than institutions of religion seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Department of Revenue.  
(56) [622] Revenue Form 62A023-3, "Application for Exemption from Property Taxation for Religious Organizations" shall be filed by institutions of religion seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Department of Revenue.  
(57) [563] Revenue Form 62A024, "Undeveloped Land and Personal Property Tax Return", shall be filed by owners or lessees of undeveloped land and personal property with the Department of Revenue, reporting property by county, including a map for each property location and lessee information for leased property.  
(58) [564] Revenue Form 62A030, "Request for Reproduction of PVA Public Records", shall be submitted to request copies of documents required to be retained by the PVA.  
(59) [565] Revenue Form 62A037, "Mail Back Card Department of Property Valuation", shall be filed by property owners, other than the owners of mobile homes, to report information regarding their property to the Department of Revenue in order to ensure assessment quality.  
(60) [566] Revenue Form 62A039, "Mail Back Card Department of Property Valuation for Mobile Manufactured Home", shall be filed by owners of mobile homes to report information regarding their property to the Department of Revenue in order to ensure assessment quality.
(61) [657] Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat Property Tax", shall be completed by the owner of a vehicle or boat, at the property valuation administrator’s office in order to correct owner or vehicle/boat information in the ad valorem tax computer system. The PVA will present the form to the county clerk when a tax refund is authorized.

(62) [658] Revenue Form 62A050, "Application for Property Tax Refund", shall be filed by taxpayers seeking a refund of taxes.

(63) [659] Revenue Form 62A200, "(2002) [2006] Unmined Coal Property Tax Information Return", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty interest for each leased parcel.

(64) [660] Revenue Form 62A200A, "Schedule A Fee Property Ownership", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty interest for each leased parcel.

(65) [661] Revenue Form 62A200B, "Schedule B Mineral Property Ownership (Coal Only)", shall be filed by owners or lessees of unmined coal with the Department of Revenue, reporting ownership information for each parcel or royalty interest for each leased parcel.

(66) [662] Revenue Form 62A200C, "Schedule C Leased Property", shall be filed by all lessees and sublessees with the Department of Revenue, reporting a property schedule for each parcel leased from another party and outlined on the lessee map.

(67) [663] Revenue Form 62A200D, "Schedule D Property or Stock Transfers" shall be filed by both purchasers and sellers of unmined mineral property, with the Department of Revenue, reporting details of the transaction.

(68) [664] Revenue Form 62A200E, "Schedule E Lease Terminations, Transfers and Assignments", shall be filed by lessees or sublessees of unmined minerals, with the Department of Revenue, reporting the parcel number, date lease was terminated and the reason for termination.

(69) [665] Revenue Form 62A200F, "Schedule F Farm Exception to Unmined Mineral Tax", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primarily in farming, to be exempted from the unmined minerals tax.

(70) [666] Revenue Form 62A200G, "Schedule G Geological Information by County", shall be filed by owners or lessees of unmined minerals, with the Department of Revenue, reporting exploration and analytical information.

(71) [667] Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", [Property Information Request Regarding Assessment Appeal,] shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

(72) [668] Revenue Form 62A304, "Property Valuation Administrator’s Recalculation of Real Property Tax Roll" shall be filed by the property valuation administrator by the first Monday in April, showing a recalculation of property assessments by type of property and by taxing district; also known as "final recap".

(73) [669] Revenue Form 62A305, "Property Valuation Administrator’s Summary of Real Property Tax Roll Changes" shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304; also known as "final recap" or "second recap".

(74) [670] Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owners appeal conference. The property owner or his representative shall be asked to sign the record and shall be given a copy of the record.

(75) [671] Revenue Form 62A310, "Summary of Bonds Held by Kentucky Residents", shall be filed with the Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(76) [672] Revenue Form 62A310-S1, "Corporate Report of Bonds [Securities] Held by Kentucky Residents", shall be filed by Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(77) [673] Revenue Form 62A311, "Life Insurance Proceeds Summary Report[Kentucky Property Tax—Cover Letter]", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(78) [674] Revenue Form 62A311-S1, "Life Insurance Proceeds Report", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(79) [675] Revenue Form 62A320, "Broker’s Report of Margin or Cash Accounts of Kentucky Residents", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting margin or cash accounts of Kentucky residents.

(80) [676] Revenue Form 62A320-S1, "Kentucky Margin Accounts", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting the margin accounts of holders as of January 1.

(81) [677] Revenue Form 62A320-S2, "Kentucky Cash Accounts", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting the cash accounts of holders as of January 1.

(82) [678] Revenue Form 62A323, "Record of Additions and Deletions shall be used by the PVA to report all real property additions and deletions for a particular assessment year.

(83) [679] Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the fair cash value of the company’s intangible property, both taxable and exempt, and the aggregate amount.

(84) [680] Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", shall be filed by property owners seeking an exemption from property taxes under Section 170 of the Kentucky Constitution. This application shall be filed with the property valuation administrator of the county in which the residential unit is located.

(85) [681] Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", shall be mailed to the property owner by the property valuation administrator notifying him of the assessment amount and of his appeal rights.

(86) [682] Revenue Form 62A353, "Notice of Listing of Omitted Real Property", shall be mailed by the property valuation administrator to the property owner. This document shall notify the property owner that his omitted property has been listed and assessed and of his appeal rights.

(87) [683] Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform him of their ruling.

(88) [684] Revenue Form 62A365, "Nonresidency Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(89) [685] Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

(90) [686] Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property.

(91) [687] Revenue Form 62A366-R, "Exoneration Form for Property Tax Refund" shall be filed by taxpayer for refunds of property tax.

(92) [688] Revenue Form 62A367, "Authorization for Preparing Additional/Supplemental Property Tax Bills" shall be used by property valuation administrator to prepare additional/supplemental tax bills(s).
securities.

Revenue Form 62A860, "Bank Deposits Tax Return," shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

Revenue Form 62A861, "Schedule 1 Summary of Deposits," shall be filed with the Department of Revenue, by taxpayers filing revenue form 62A500 or 62A801, listing deposits located in each county and city.

Revenue Form 62A862, "Certification of Tax Rates for Bank Deposits Franchise Tax," shall be filed by the local taxing district with the Department of Revenue to notify us of the rate set on bank deposits.

Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report," shall be filed with the Department of Revenue, by financial institutions, reporting all deposits located in the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

Schedule A, "Summary of Deposits," shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A863, to summarize deposits.

"Trust Questionnaire," shall be sent by the Department of Revenue to a taxable trust to request additional information for ad valorem tax purposes.

Revenue Form 62A865, "Kentucky Intangible Property Tax, Marginal Accounts, and Brightwork Properties," shall be sent by the Department to the brokers maintaining an office in Kentucky notifying them of their intangible assessment.

Revenue Form 62A872, "Intangible Property Assessment Notice for Prepayment of Estates," shall be sent by the Department of Revenue to the taxpayer notifying him of the assessed value of intangible property in the settlement of an estate.

Revenue Form 62A875, "Tangible Business Situs for Kentucky Intangible Tax Purposes," shall be filed by intangible property owners with the Department of Revenue in order to determine if the property is a Kentucky taxable business situs.

Revenue Form 62A876-A, "Omitted Intangible Property List," shall be filed by the owner of intangible property with the Department of Revenue in order to report for taxation previously omitted property.

Revenue Form 62A878, "Omitted Intangible Worksheet," shall be used by the Department of Revenue to list and assess omitted intangible property. This worksheet shall be sent to the property owner.

Revenue Form 62A880, "Omitted Personal Property Assessment," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in omitted personal property assessed by the department as well as all applicable penalties and interest.

Revenue Form 62B001, "Unmined Coal Tax Notice (Sublessee)," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

Revenue Form 62B002, "Unmined Coal Tax Notice (Lessee)," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

Revenue Form 62B003, "Unmined Coal Tax Notice (Owner)," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

Revenue Form 62B010, "Omitted Notice of Assessment on Unmined Coal," shall be sent by the Department of Revenue notifying the taxpayer of the value of his interest in unmined coal property.

Revenue Form 62B011, "Limestone, Sand, or [and] Gravel Tax Notice," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in limestone, sand or gravel property.

Revenue Form 62B012, "Oil Assessment Notice," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in oil property.

Revenue Form 62B013, "Clay Property Assessment Notice," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in clay property.

Revenue Form 62B014, "Undeveloped Oil and Gas Assessment Notice," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in undeveloped oil and gas property.

Revenue Form 62B015, "Gas Assessment Notice," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

Revenue Form 62B016, "Fluorspar [Fluor spar] Property Assessment Notice," shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

Revenue Form 62B008, "Omitted Intangible Property Listing Request Letter," shall be sent by the Department of Revenue to the owner of intangible property in which the department has reason to believe has been omitted or undervalued on the tax rolls.

Revenue Form 62F002, "Appeals Process for Personal Property Assessments," shall be an informational brochure on the procedure to follow to appeal an assessment on personal property.

Revenue Form 62F003, "Appeals Process for Real Property Assessments," shall be an informational brochure on the procedure to follow to appeal an assessment on real property.

Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines," shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

Revenue Form 62F020, "Deeds/Transfers and Property Taxes," shall be an informational brochure on Kentucky's property tax system, sales and transfers of property and the requirements for preparing a deed.

Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals," shall be filed with the county clerk by any taxpayer wishing to appeal his assessment on real property.

Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes," shall inform taxpayers, subject to intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 15. Racing Taxes - Required Forms. Revenue Form 73A100, "Race Track Par-Mutuel and Admissions Report," shall be used by race tracks licensed by the Kentucky Racing Commission to report liability for the pari-mutuel tax and to report admissions to the race track.

Section 16. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101, "Sales and Use Tax Permit," shall be conspicuously displayed by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A102, "Kentucky Sales and Use Tax Return and Worksheet," shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(3) Revenue Form 51A102E, "Kentucky Sales and Use Tax Return and Worksheet - Electronic Funds Transfer," shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(4) Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Return and Worksheet," shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(5) Revenue Form 51A103E, "Sales and Use Tax Return and
Worksheet - Electronic Funds Transfer*, shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer. 

(9) Revenue Form 51A104, "Six Percent Sales Tax Collection Bracket" shall be used by a Kentucky sales and use tax permit holder to compute the correct amount of sales and use tax due on the amount of sales.

(10) Revenue Form 51A105, "Resale Certificate", shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property purchased from the seller will be:
   (a) Resold in the regular course of business,
   (b) Leased or rented; or
   (c) Used as raw material, industrial supply or industrial tool.

(11) Revenue Form 51A108, "Application for Energy Direct Pay Authorization* shall be filed with the Department of Revenue by a manufacturer, processor, miner or refiner to apply for an energy direct pay authorization.

(12) Revenue Form 51A110, "Direct Pay Authorization", shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(13) Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or production processor to claim exemption from sales and use tax.

(14) Revenue Form 51A112, "Application for Direct Pay Authorization", shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(15) Revenue Form 51A113, "Kentucky Consumer's Use Tax Return and Worksheet", shall be completed by a registered consumer's use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases subject to Kentucky use tax.

(16) Revenue Form 51A113(3), "Consumer's Use Tax Return - Non-registered Filer* shall be completed by a person storing, using, or otherwise consuming tangible personal property in Kentucky who is not registered for a consumer's use tax permit number.

(17) Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", shall be presented to the Department of Revenue by anyone who wishes to order sales selected sales and use tax forms, regulations and informational circulars.

(18) Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", shall be presented to the Department of Revenue by a resident 101C charitable, educational, or religious institution; local political units; and units of federal, state or local governments to apply for a sales and use tax exemption on purchases of tangible personal property and certain services to be utilized in the exempt entity's function.

(19) Revenue Form 51A126, "Purchase Exemption Certificate", shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property or services.

(20) Revenue Form 51A127, "Out-of-State Exemption Certificate", shall be presented to a retailer by an out-of-state agency or institution that has previously qualified for exemption in their state or residence and previously provided proof of such exemption to the Sales and Use Tax Section, Kentucky Department of Revenue to claim exemption from sales and use tax on its purchases of tangible personal property.

(21) Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate* shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to separate paper, metal, glass, or other handle waste material.

(22) Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", shall be submitted to the Department of Revenue by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount sales and use tax paid based upon previous estimates of tax due.

(23) Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Tax Credit Schedule of Qualified Certificated Air Carrier", must be completed by a certificated air carrier on a monthly basis to claim an aviation fuel tax credit against the company's sales and use tax liability for the month.

(24) Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", must be completed by aviation fuel dealers selling jet fuel in order to determine the sales and use tax collected on the sale of jet fuel.

(25) Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplemental Schedule", shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

(26) Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Industry", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used in the activity of transporting property or in conveying persons for hire.

(27) Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(28) Revenue Form 51A150, "Air Craft Exemption Certificate* shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire.

(29) Revenue Form 51A155, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV) Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs, and in addition the person making delivery of the tangible personal property shall complete the affidavit portion of the form within 2 (two) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(30) Revenue Form 51A156, "Certificate of Exemption for Rattle Bird Production", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of rattle birds, eggs, and supplies used in this agriculture pursuit.

(31) Revenue Form 51A157, "Certificate of Exemption for Oil-Lama/Alpaca Production* shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of llamas/alpacas and supplies used in this agricultural pursuit.

(32) Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equines", shall be presented to a retailer by a
a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(33) (34) Revenue Form 51A158, "Farm Exemption Certificate", shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding lambs, alpacas, ruminants, buffalo or equine organisms to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(35) (36) Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the initial construction of on-farm facilities exempt under the provisions of KRS 139.480.

(37) (38) Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", shall be used by the owner of a motor vehicle qualifying for the repair and replacement part exemption provided under KRS 139.480(32) to directly report and pay to the Department of Revenue the sales and use tax that would have been remitted to the department by suppliers had the truck part direct pay authorization been issued.

(39) (40) Revenue Form 51A161, "Truck Part Direct Pay Authorization", shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

(41) (42) Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", shall be filed annually by motor carriers using the truck part direct pay authorization to report purchases of repair and replacement parts for motor vehicle for the previous calendar year.

(43) Revenue Form 51A163, "Application for Issuance of part Replacement Part Direct Pay Authorization", shall be used by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to directly report and pay to the Department of Revenue the sales and use tax that would have been remitted to the department by suppliers had the charter bus part direct pay authorization not been issued.

(44) Revenue Form 51A165, "Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", shall be used by qualified businesses to apply for a refund of sales and use tax paid on purchases of materials used in an approved project.

(45) (46) Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", shall be used by Kentucky sales and use tax permit holders as a guide in filing their sales and use tax returns and in maintaining accounting information.

(47) Revenue Form 51A209, "Sales and Use Tax Refund Application", shall be submitted by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

(48) (49) Revenue Form 51A216, "Application for Pollution Control Tax Exemption Certificate", shall be submitted by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(50) (51) Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(52) Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(53) (54) Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(55) (56) Revenue Form 51A227, "Certificate of Resale (Schools)", shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property that will be resold provided the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(57) (58) Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(59) (60) Revenue Form 51A229, "Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(61) (62) Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(63) (64) Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", shall be completed by a motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property made in connection with filming and producing motion pictures in Kentucky.

(65) (66) Revenue Form 51A250, "Application for Transient Merchant Permit", shall be filed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(67) (68) Revenue Form 51B105A, "Sales and Use Tax Return Inquiry", shall be in a form that is completed by the Department of Revenue to request additional information from a Kentucky sales and use tax permit holder regarding a sales and use tax return.

(69) (70) Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax Notification", shall be issued by the Department of Revenue to a federal government unit when the government in turn is presented by a retailer by the Department of Revenue to claim exemption from sales and use tax on purchases of tangible personal property to be used in the exempt governmental function.

(71) (72) Revenue Form 51F009, "Purchase Exemption Notification", shall be issued by the Department of Revenue to a resident nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number additional information concerning the exemption from sales and use tax.

(73) (74) Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", shall be issued by the Department of Revenue to a Kentucky sales and use tax permit holder that it has been authorized to purchase energy and energy-producing fuels without paying or reimbursing the vendor for the sales and use tax and that they are required to report and pay directly to the Department of Revenue the sales and use tax on that portion of the cost price which is subject to tax pursuant to KRS 139.480(3).

Section 17. Severance Taxes - Required Forms. (1) Revenue Form 55A001, "Application for Certificate of Registration for Coal Severance Taxes", shall be used by the Auditor of Revenue to register businesses that sever or process coal.

(2) Revenue Form 55A003, "Certificate of Registration- Severance Taxes", shall be used by the Department of Revenue to register coal severance taxpayers.
(3) Revenue Form 55A004, "Coal Severance Tax Seller's Certificate", shall be filed by the taxpayer to verify purchase coal deductions.

(4) Revenue Form 55A100, "Coal Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(5) Revenue Form 55A100, "Part IV - Schedule of Coal Sales (Continuation)", shall be used by the taxpayer to report additional coal sales if there is not room on the return.

(6) Revenue Form 55A100D, "Coal Tax Return - Keep This Copy", a replica of the Coal Tax Return shall be completed by the taxpayer and retained in his files for informational purposes.

(7) Revenue Form 55A100D, "Part IV - Schedule of Coal Sales - Keep This Copy (continuation)", a replica of the Schedule of Coal Sales (Continuation) shall be completed by the taxpayer and retained in his files for informational purposes.

(8) Revenue Form 55A101, "Coal Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his return.

(9) Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

(10) Revenue Form 55A209, "Severance Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of tax overpaid.

(11) Revenue Form 55A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an account number.

(12) Revenue Form 55A100, "Natural Gas and Natural Gas Liquids Tax Return", shall be used by registered natural gas and natural gas liquids taxpayers monthly to report production and tax due.

(13) Revenue Form 55A101, "Minerals Tax Return", shall be used by registered mineral taxpayers monthly to report production and tax due.

(14) Revenue Form 55A106, "Minerals Tax Certificate of Exemption", shall be used by mineral taxpayers to claim exemptions from minerals tax for minerals purchased for the maintenance of a privately maintained but publicly dedicated road.

(15) Revenue Form 55A107, "Schedule A, Allocations of Gross Value of Minerals Severed in Kentucky and Schedule B, Minerals Purchased from Others for Processing by Taxpayer", shall be used by mineral taxpayers to compute gross value of minerals to be allocated and to show the allocation by county of the gross value of minerals severed in Kentucky and also shall be used by taxpayer for showing minerals that are purchased from others for processing by the taxpayer.

(16) Revenue Form 55A108, "Schedule A, Gross Value of Natural Gas Sold to Nonconsumers and Schedule B, Taxable Gross Value of Natural Gas and Natural Gas Liquids Extracted in Kentucky by Taxpayer - Allocation", shall be used by natural gas taxpayers to show details of all natural gas extracted in Kentucky and sold to nonconsumers and also shall be used by natural gas taxpayers to allocate the natural gas to the county or counties where the natural gas or natural gas liquids were located prior to extraction.

(17) Revenue Form 55A109, "Schedule C, Natural Gas First Purchased by Taxpayer From Kentucky Producers", shall be used by natural gas taxpayers who are first purchasers of natural gas to show gross value by county or counties from which the natural gas was extracted.

(18) Revenue Form 55A110, "Attachment C Computation of Clay Severed and Processed in Kentucky and Allocation of Tax Attributable to Clay", shall be used by mineral taxpayers that sever clay to compute tax due.

(19) Revenue Form 55A112, "Crude Petroleum Transporter's Monthly Report, Kentucky Oil Production Tax", shall be used by registered crude petroleum transporter's for reporting gross value and tax due.

(20) Revenue Form 55A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce", shall be used by mineral taxpayers for the purpose of determining the eligibility for the minerals tax credit.

(21) Revenue Form 55A114, "Crude Petroleum Transporter's Application for Registration", shall be used by crude petroleum transporter's who wish to acquire an account number with the Kentucky Department of Revenue.

Section 18. Telecommunications Provider Tax - Required Forms. (1) Revenue Form 75A001, "Telecommunications Receipts Certification Form", shall be used by telecommunications providers to certify tax receipts for fiscal year 2005.

(2) Revenue Form 75A002, "Telecommunications Provider Tax Return", shall be used by telecommunications providers to report gross revenues from and consumers to report total purchases of multi-channel video and audio programming and telephone communication services and to report tax due.

(3) Revenue Form 75A004, "Telecommunications Tax Application", shall be used by telecommunications providers to register with the Department of Revenue.

Section 19. Transient Room Tax - Required Forms. Revenue Form 75A850, "Transient Room Tax Monthly Return", shall be used by all persons, companies, corporations, groups or organizations doing business as motor courts, motels, hotels, inns, tourist camps, or like or similar accommodations businesses (excluding campgrounds) to report the taxable rent amount and transient room tax liability.

Section 20. Utility Gross Receipts License Tax - Required Forms. (1) Revenue Form 73A900, "Utility Gross Receipts License Tax Return", shall be used by utility service providers, consumers, and Energy Direct Pay (EDP) account holders to apply for a utility gross receipts license tax account number.

(2) Revenue Form 73A901, "Utility Gross Receipts License Tax Return", shall be used by UGRL account number holders to report gross receipts, school district allocation, and tax liability.

(3) Revenue Form 73A901T, "Instructions for Utility Gross Receipts License Tax Payment Voucher", shall be used by UGRL account number holders to comply with the utility gross receipts license tax return.

(4) Revenue Form 73A902, "Utility Gross Receipts License Tax (UGRL) Energy Exemption Annual Return", shall be used by UGRL account number holders to apply for an exemption from the utility gross receipts license tax.

(5) Revenue Form 73A902V, "Kentucky Utility Gross Receipts License Tax Payment Voucher", shall be used by UGRL account number holders to remit payment of the utility gross receipts license tax.

Section 21. Waste Tire Tax - Required Form. Revenue Form 73A051, "Motor Vehicle Tire Fee Report", shall be used by businesses making retail sales of new motor vehicle tires to report liability for motor vehicle tire fee and to report the number of waste tires received from customers.

Section 22. [19] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Administrative - referenced material:
   2. Revenue Form 10A001, "Request to Inspect Public Records", February, 1997;
   5. Revenue Form 10A100, "Kentucky Tax Registration Application", June [February], 2005;
   6. Revenue Form 10A100CS, "Kentucky Tax Registration Application", June [February], 2005;
   7. Revenue Form 10A100-D, "Instructions for Kentucky Tax Registration Application", June [February], 2005;
   8. Revenue Form 10A100CS-I, "Instructions for Kentucky Tax Registration Application", June [February], 2005;
   9. Revenue Form 10A100-S, "Kentucky Tax Registration Supplemental Information Schedule", October, 2002;
11. Revenue Form 10A170, "Request For Notification of Administrative Regulation Filing", August, 2003;  
13. Revenue Form 10F100, "Your Rights As A Kentucky Taxpayer", June, 2004;  
15. Revenue Form 12A012, "Receipt of Seized Property", November, 1989;  
17. Revenue Form 12A104, "Notice of Seizure", October, 1982;  
18. Revenue Form 12A107, "Notice of Sale", October, 1996;  
20. Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", October, 1996;  
22. Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", October, 1996;  
26. Revenue Form 12A504, "Personal Assessment of Corporate Officer", August, 1996;  
27. Revenue Form 12A505, "Waiver Extending Statutory Period for Assessment of Corporate Officer", August, 1996;  
29. Revenue Form 12A507, "Table for Figuring the Amount Exempt From Levy On Wages, Salary, and Other Income", August, 1996;  
30. Revenue Form 12A508-1, "Notice of Assessment", October, 1996;  
32. Revenue Form 12A510, "Guidelines for Wage Levy Processing", August, 1996;  
33. Revenue Form 12A511, "Guidelines for Bank Levy Processing", August, 1996;  
34. Revenue Form 12A512, "Confidential Agent Appointment", October, 1995;  
35. Revenue Form 12A513, "Nexus Questionnaire", October, 1996;  
36. Revenue Form 12A514, "Questionnaires for Persons Relative to a Notice of Assessment", August, 1996;  
37. Revenue Form 12A515, "Requirements for Agreed Judgments", October, 1996;  
38. Revenue Form 12A517, "Notice of State Tax Lien", October, 1996;  
40. Revenue Form 12A519, "Proof of Claim", October, 1996;  
42. Revenue Form 12A639(), "Instructions for Completing Statement of Financial Condition for Individuals", August, 2004;  
43. Revenue Form 12A639, "Statement of Financial Condition for Businesses", August, 2004;  
44. Revenue Form 12A639(), "Instructions for Completing Statement of Financial Condition for Businesses", August, 2004;  
45. Revenue Form 12B501, "Notice of Levy on Wages, Salary, and Other Income", October, 1996;  
46. Revenue Form 12B502, "Notice of Levy", October, 1996;  
47. Revenue Form 21A020, "Request for Copy of Tax Refund Check", June, 1988;  
49. Revenue Form 31A001, "Vendor Contact Authorization", November, 2005 [March, 1998];  
50. Revenue Form 31A004, "Auditor Record of Money Receipt Issued", November, 2005 [February, 2004];  
51. Revenue Form 31A010, "Sales Tax and Electronic Data Questionnaire", January, 2004;  
52. Revenue Form 31A012, "Interstate Sales/Income Tax Questionnaire", February, 2004;  
53. Revenue Form 31A014, "SEATA - Southeastern Association of Tax Administrators Nexus Questionnaire", February, 2004;  
54. Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", September, 2004;  
56. Revenue Form 31A725, "Statute of Limitations Agreement", September, 2004;  
57. Revenue Form 31F010, "Kentucky's Computer Assisted Audit Program", July, 2005;  
58. Revenue Form 42F102, "Large Employer Program Electronic Filing Fact Sheet", August, 1996;  
(b) Alcoholic beverage - referenced material:  
1. Revenue Form 73A504, "Acknowledgment of Tax Liability on Imported Alcoholic Beverages", March, 1992;  
5. Revenue Form 73A530, "Consignor's Report of Alcoholic Beverages Shipped", August, 1996;  
14. Revenue Form 73A589, "Beer Distributor's Sales to Federal Agencies", June, 1992;  
(c) Bank franchise - referenced material:  
1. Revenue Form 73A800, "Kentucky Registration Application for Bank Franchise Tax", January, 2005 [December, 2004];  
2. Revenue Form 73A801, "2004 Bank Franchise Tax Return", December, 2004;  
5. Revenue Form 73A809, "Cigarette License Application", June, 2001;  
6. Revenue Form 73A190, "Cigarette License", April, 1988;  
7. Revenue Form 73A404, "Cigarette Tax Stamps Order Form", November, 2005 [June, 2004];  
9. Revenue Form 73A409, "Cigarette Evidence/Property Receipt", November, 2003;  
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Taxes*, December, 1984;
20. Revenue Form 92A936, "Election to Qualify Termination
of Interest Property and/or Power of Appointment Property", May,
1995;
22. Revenue Form 92F101, "A Guide to Kentucky Inheritance
and Estate Taxes", April, 2000;
(2) Insurance - referenced material:
1. Revenue Form 74A100, "Insurance Premiums Tax Return",
November, 2005 [December, 2003];
2. Revenue Form 74AI01, "Insurance Tax Return - Domestic
Mutual, Domestic Mutual Fire, or Cooperative and Assessment
Fire Insurance Companies", December, 2003;
3. Revenue Form 74A105, "Unauthorized Insurance Tax
Return", July, 2000;
4. Revenue Form 74A106, "2004 Insurance Premiums Tax
Return - Captive Insurer", December, 2004;
5. Revenue Form 74AI110, "2005 Kentucky Estimated
Insurance Premiums Tax", November, 2005 [December, 2004];
6. Revenue Form 74AI116, "Tax Election for Domestic Life
Insurance Companies", December, 1998;
7. Revenue Form 74AI117, "Monthly Insurance Surcharge
Report - Domestic Mutual, Cooperative and Assessment Fire Insurer",
July, 2000;
8. Revenue Form 74AI118, "Monthly Insurance Surcharge
Report", July, 2000;
(i) Legal process - referenced material: Revenue Form
73A200, "County Clerk's Monthly Report of Legal Process Tax
Receipts", June, 2000;
(i) Marijuana and controlled substance - referenced material:
1. Revenue Form 73A701, "Instructions for Affixing Marijuana
and Controlled Substance Tax Evidence (Slapst)!", July, 1994;
2. Revenue Form 73A702, "Notice of Tax Lien KRS 138.870
Marijuana and Controlled Substance Tax", June, 2001;
3. Revenue Form 73A703, "Marijuana or Controlled Substance
Stamps Order Form", October, 2002;
(i) Motor fuels - referenced material:
1. Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund
Bond", November, 1990;
2. Revenue Form 72A005, "Application for Approval to Sell
Watercraft Refund Motor Fuels - Public Boat Dock", February,
2003;
3. Revenue Form 72A006, "Motor Fuels Tax Refund Application -
Public Boat Dock", February, 2003;
4. Revenue Form 72A010, "Motor Fuel Tax Refund Permit
Holder's Bond", July, 1983;
5. Revenue Form 72A011, "Petroleum Storage Tank Environmental
Assurance Fee Monthly Report", September, 2002;
6. Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund
Permit", May, 1993;
7. Revenue Form 72A053-A, "Application for Refund of Ken-
tucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", Novem-
ber, 1996;
8. Revenue Form 72A054-A, "Kentucky Motor Fuels Tax Refund
Invoice", June, 1998;
9. Revenue Form 72A065, "Aviation Gasoline Tax Refund
Bond", March, 1995;
10. Revenue Form 72A066, "Application for Refund of Ken-
tucky Tax Paid on Gasoline Used in Operation of Aircraft", March,
1999;
11. Revenue Form 72A067, "Application for Approval to Re-
cieve a Refund of Aviation Motor Fuels", January, 2003;
12. Revenue Form 72A071, "Motor Fuels Tax Refund Bond -
City and Suburban Bus, Nonprofit Bus, Senior Citizen Transpor-
tation, or Taxicabs!", October, 2005 [July, 1984];
13. Revenue Form 72A072, "Application for Motor Fuel Refund
- City and Suburban Bus Companies, Nonprofit Bus Companies,
Senior Citizen Transportation and Taxicabs Companies", August,
2005 [May, 1994];
14. Revenue Form 72A073, "Application for Approval to Re-
cieve a Refund of Tax on Motor Fuels Consumed by City and Sub-
urban Buses, Nonprofit Buses, Senior Citizen Transportation and
Taxicabs!", June, 1999;
15. Revenue Form 72A075, "Receipts of Unreported Alcohol or
Other Additives", August, 2005;
16. Revenue Form 72A077, "Licensed Gasoline Dealer's
17. [46] Revenue Form 72A078, "Statement of Claim for Ac-
countable Loss of Motor Fuel", March, 1994;
18. [46] Revenue Form 72A080, "Report of Gasoline Received
From Licensed Kentucky Dealers", February, 2002;
from Other States", January, 1999;
20. [46] Revenue Form 72A081-P, "Purchaser's Report Gas-
oline Imported Into Kentucky - Kentucky Tax Paid to Suppliers",
January, 1999;
21. [46] Revenue Form 72A081-S, "Supplier's Report Gas-
oline Imported Into Kentucky - Kentucky Tax Paid by Supplier",
January, 1999;
22. [46] Revenue Form 72A082, "Report of Gasoline Im-
ported", June, 1988;
23. [25] Revenue Form 72A083, "Report of Gasoline Received
from Terminal or Refinery", June, 1988;
February, 2002;
Licensed Kentucky Dealers", February, 2003;
26. [25] Revenue Form 72A086, "Report of Gasoline With-
drawals from Terminal Storage", June, 1988;
27. [26] Revenue Form 72A087, "Report of Gasoline With-
drawals to Licensed Kentucky Dealers", June, 1998;
28. [26] Revenue Form 72A088, "Report of Gasoline With-
drawals Exported or Sold for Export", June, 1998;
29. [26] Revenue Form 72A089, "Licensed Gasoline Dealers
Monthly Report", August, 2005 [June, 2002];
30. [26] Revenue Form 72A090, "Gasoline Dealers Monthly
Terminal Storage Report", December, 1992;
31. [26] Revenue Form 72A091, "Gasoline Dealers Schedule of Sales
Qualifying for Agricultural Tax Credit", June, 2002;
32. [41] Revenue Form 72A098, "Transporter's Report of Mo-
tor Fuel Delivered", October, 1999;
33. [32] Revenue Form 72A099, "Licensed Gasoline Dealer's
Estimated Tax Payment", January, 2003;
34. [32] Revenue Form 72A107, "Licensed Special Fuels
Dealer's Monthly Report of Special Fuels Sales to U.S. Govern-
ment", July, 2000;
35. [34] Revenue Form 72A110, "Certification of Special Fuels
Nonhighway Use", December, 2005 [September, 2002];
36. [36] Revenue Form 72A124, "Report of Kerosene Re-
cieved and Blended", June, 2002;
37. [36] Revenue Form 72A127, "Special Fuels Dealer's
Schedule of Sales Qualifying for State or Local Government
Agency Credit", June, 2002;
38. [37] Revenue Form 72A128, "Special Fuels Dealer's
Schedule of Sales Qualifying for Nonprofit Religious, Charitable or
Educational Organization Credit", June, 2002;
39. [38] Revenue Form 72A129, "Special Fuels Schedule of Sales
Qualifying for Commercial Off-Road Use Tax Credit (Unleaded
Diesel)", June, 2002;
40. [29] Revenue Form 72A131, "Special Fuels Dealer's
Schedules of Sales Qualifying for Agricultural Tax Credit", June,
2002;
41. [40] Revenue Form 72A132, "Special Fuels Dealer's
Schedule of Sales Qualifying for Residential Heating Tax Credit",
June, 2002;
42. [41] Revenue Form 72A135, "Application for Kentucky
Motor Fuels Tax Refund Permit", September, 2002;
43. [42] Revenue Form 72A136, "Licensed Special Fuels
Dealer's Monthly Report", June, 2002;
44. [42] Revenue Form 72A153, "Report of Special Fuels
Received from Licensed Kentucky Dealers", July, 2000;
45. [44] Revenue Form 72A154, "Report of Special Fuels
Imported from Other States", January, 1998;
46. [46] Revenue Form 72A154-P, "Purchaser's Report Special
Fuels Imported - Kentucky Tax Paid to Supplier", January, 1999;
47. [46] Revenue Form 72A154-S, "Supplier's Report Special
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109. [98.] Revenue Form 62A384F, "Frustration [Repealed]
125. Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Intangible Personal Property Tax Return", October, 2005.
143. [131.] Revenue Form 62B001, "Unmined Coal Tax Notice (Sublessee)", March, 2002.
152. [140.] Revenue Form 62B016, "Frustration [Repealed]
159. [147.] Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for
Istration Minerals and Natural Gas Tax*, October, 1994;
12. Revenue Form 56A100, "Natural Gas and Natural Gas Liquids Tax Return*, August, 1999;
17. Revenue Form 56A109, "Schedule C, Natural Gas First Purchased by Taxpayer from Kentucky Producers*, January, 2005;
20. Revenue Form 56A113, "Minerals Tax Credit for Limestone Sold in Interstate Commerce*, November, 1997;
21. Revenue Form 56A114, "Crude Petroleum Transporter's Application for Registration*, February, 2001; [and]
(1) Telecommunications provider tax - referenced material: 1. Revenue Form 75A001, "Telecommunications Tax Receipts Certificate*, December, 2005;
2. Revenue Form 75A002, "Telecommunications Provider Tax Return*, December, 2005;
3. Revenue Form 75A003, "Telecommunications Tax Application*, December, 2005;
(2) Transient room tax - referenced material: Revenue Form 73A020, "Transient Room Tax Monthly Return*, April, 2005; and
2. Revenue Form 73A901, "Utility Gross Receipts License Tax Return*, August, 2005;
3. Revenue Form 73A901(1), "Instructions for Utility Gross Receipts License Tax Return*, January, 2006;
6. Revenue Form 73F010, "Utility Gross Receipts License Tax*, March, 2005; and
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Far Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5 [4.30] p.m.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 4 p.m.
CONTACT PERSON: Edward A. Mattingly, Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3694, email eddie.mattingly@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Edward A. Mattingly

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This amended administrative regulation updates the required revenue forms incorporated by reference.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required forms administered by the Department of Revenue.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates the forms manual regulation to include new forms, replace superseded forms with successor forms, and eliminate obsolete forms.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the forms manual regulation to include new forms, replace superseded forms and eliminate obsolete forms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This amended administrative regulation updates the required revenue forms incorporated by reference.

(d) How the amendment will assist in the effective administration of the statutes: The amendment incorporates by reference the most current forms administered by the Department of Revenue.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.

(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: Taxpayers will benefit from the updated incorporation of forms administered by the Department of Revenue.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: 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 because the requirements of this regulation apply to every taxpayer.

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STATEMENT OF EMERGENCY

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 1:080E. Policies and Circulars.

RELATES TO: KRS 13A.010, 13A.100, 13A.120, 131.130(1)

STATUTORY AUTHORITY: KRS Chapter 13A

EFFECTIVE: February 1, 2006

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. Previously, the department issued policies and circulars that predicated the enactment of KRS Chapter 13A (requiring that such actions be done only by an administrative regulation) and that conflict with current tax laws. This administrative regulation provides that those previously-issued policies and circulars are withdrawn and shall not be utilized or enforced in Kentucky.

Section 1. Policies and Circulars. The following policies and circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose:

1. 10C0200 Kentucky Tax Registration Application
2. 40C003 Taxation of Federal and Certain Nonfederal Obligations and Their Income for Kentucky Income and Intangible Property Tax Purposes (rev 4/1/2)
3. 10C001 Tax Provisions of the Enterprise Zone Law (rev 1/1/04)
4. 62C077 Sheriff's Annual Settlement for State Taxes (rev 1/15/01)
5. 62C112 Duties in Taxing Omitted Real and Tangible (rev 12/1/01)
6. 51C001 General Information (rev 12/1/96)
7. 51C001-S1 Application to Grocery Stores (rev 12/96)
8. 51C001-S2 Application to Restaurants (rev 12/96)
9. 51C001-S3 Application to Service Stations (rev 7/90)
10. 51C001-S4 Application to Service Enterprises and Persons Rendering Professional Services (rev 7/90)
11. 51C001-SS Application to Hotels and Motels (rev 6/00)
12. 51C001-S6 Application to Admissions (rev 7/92)
13. 51C001-ST Application to Wholesale Operations (rev 7/90)
14. 51C001-S8 Application to Building Suppliers (rev 7/90)
15. 51C001-S12 Application to Automotive Supply Wholesale (rev 7/90)
16. 51C001-S13 Application to Manufacturers (rev 7/90)
17. 51C004 Exemption of Residential Utilities (rev 7/1/92)
18. 51C005 Application to Radio and Television Stations (rev 7/1/90)
19. 51C006 Exemption of Pollution Control Facilities (rev 7/1/94)
20. 51C007 Application to Electric Utility Companies - Uniform Standard Accounts
21. 51C008 Application to Gas Utility Companies - Uniform Standard Accounts
22. 51C009 Improper Use of Resale Certificates (rev 9/1/91)
23. 51C010 Application to Mine Suppliers and Operators - Mining Supplies (rev 8/1/94)
24. 51C011 Application to the Horse Industry (rev 7/1/90)
25. 51C012 Application of Sales and Use Tax to Property Used in the Publication of Newspapers (rev 8/1/91)
26. 51C013 Oil and Gas Machinery, Equipment and Supplies (rev 7/1/90)
27. 51C018 Application to Aircraft Dealers (rev 12/1/68)
28. 51C019 Application to Carnival and Circus Operations and Concessionaires (rev 8/1/92)
29. 51C020 Application to Repairers and Reconditioners of Tangible Personal Property Who Sell Service Maintenance and Extended Warranty Contracts (rev 7/1/90)
30. 51C025 Use Tax Due on Out-of-state Purchases by Individuals (rev 4/1/92)
31. 51C030 Proper Application of Sales and Use Tax by Kentucky Educational, Charitable and Religious Institutions (rev 7/1/82)
32. 51C035 Application of Sales Tax to Cigarette Sales (rev 7/1/90)
33. 51C045 Application of Use Tax to Tangible Personal Property by Kentucky Businesses (rev 7/1/90)
34. 55C001 General Provisions (rev 1/1/02)
35. 55C002 Important Changes in Requirements for Reporting Coal Severance Tax Transactions
36. 56C001 Tax on Gross Value of Natural Gas and Natural Gas Liquids (rev 12/1/92)
37. 56C002 Tax on Gross Value of Minerals (rev 8/1/94)
38. 56C003 Production or Transportation of Crude Petroleum Oil
39. 40C003 Taxation of Federal and Certain Nonfederal Obligations and Their Income for Kentucky Income and Intangible Property Tax Purposes (rev 8/1/91)
40. 40C005 Kentucky Disposition System - Corporate and Noncorporate (rev 12/1/90)
41. 40C010 Reporting Requirements for Nonresident Partners or S Corporation Shareholders' Combined Kentucky Income Tax Return
42. 40C030 Corporate and Individual Income Tax - Special Reporting Procedures (rev 12/1/97)
43. 41C020 Safe Harbor or Finance Leases
44. 42C005 Reciprocity - Income Tax Credit; Nonresidents - Exemption from Taxation (rev 10/1/88)
45. 42C010 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Industrial Revitalization Authority (S.B. 315) (rev 7/1/93)
46. 40C030 Corporate and Individual Income Tax - Special Reporting Procedures (rev 12/1/97)
47. 41C020 Safe Harbor or Finance Leases
48. 42C005 Reciprocity - Income Tax Credit; Nonresidents - Exemption from Taxation (rev 10/1/88)
49. 42C010 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Industrial Revitalization Authority (S.B. 315) (rev 7/1/93)
50. 42C011 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Jobs Development Authority (S.B. 314) (rev 7/18/93)
51. 42C012 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Rural Economic Development Authority (KRS 154.22-010 through 154.22-080) (rev 12/1/95)
52. 42C013 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Industrial Development Act (KRS 154.28-010 through 154.28-100)
53. 37C455 Cigarette Subj Ober Licensees (rev 12/1/98)
54. 37C456 Cigarette Licensing Requirements (rev 12/1/90)
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Resulting from Change in Ownership;
(169) 41P030 Six (6) Year Statute of Limitations;
(170) 41P040 Declaration of Estimated Tax Penalty;
(180) 41P070 Income and Deductions (rev 8/1/90);
(181) 41P071 Claim of Right - Section 1341 Internal Revenue

Code;
(182) 41P080 Coal Royalty Income;
(183) 41P090 Jobs Tax Credit;
(184) 41P100 Deductibility of State Taxes;
(185) 41P110 Deductibility of State Taxes;
(186) 41P120 Deductibility of State Taxes;
(187) 41P121 Deductibility of State Taxes;
(188) 41P125 Windfall Profit Tax;
(189) 41P130 Taxation of Income from Activities on the Outer
Continental Shelf (rev 9/21/89);
(190) 41P140 Subpart F Income;
(191) 41P150 Expenses Related to Nonbusiness or Nontax-
able Income;
(192) 41P160 First - Year Net Operating Loss;
(193) 41P170 Sales Factor;
(194) 41P180 Property Factor;
(195) 41P190 Net Rental Income;
(196) 41P200 Partnership and Joint Venture Income Classified
Business Income;
(197) 41P210 Business Apportionment Factor for Corporations
Reporting Income on Completed Contract Method;
(198) 41P220 Separate Accounting;
(199) 41P230 Financial Organizations;
(200) 41P240 Homeowners Associations;
(201) 41P250 Taxation of Foreign Sales Corporations and
Domestic International Sales Corporations;
(202) 41P260 Corporate Distributions, Liquidations and Reor-
ganizations (rev 9/14/90);
(203) 41P500 Agreement to Extend Statute of Limitations (rev
6/17/94);
(204) 41P510 Final License Tax Return;
(205) 41P520 Capital (rev 12/1/95);
(206) 41P530 Borrowed Moneys;
(207) 41P540 Unearned Leasehold Income;
(208) 41P550 Borrowed Moneys;
(209) 41P560 Outer Continental Shelf (rev 9/21/89);
(210) 41P570 Corporation License Tax Apportionment Factor;
(211) 41P580 Sales Factor;
(212) 41P585 Homeowners Associations;
(213) 41P600 Real Estate Investment Trust (rev 3/14/94);
(214) 42P010 Statute of Limitations;
(215) 42P020 Waiving Estimated Tax Penalty (rev 12/1/86);
(216) 42P021 Estimated Tax Penalty;
(217) 42P022 Estimated Tax Penalty;
(218) 42P030 Credit for Tax on a Foreign Country;
(219) 42P040 Basis of Property Acquired from a Decedent;
(220) 42P065 Joint Estimated Tax Payments - Divorced Tax-
payers;
(221) 42P090 Military Personnel;
(222) 42P110 Military Resident - Nonresident Spouse;
(223) 42P120 Division of Income;
(224) 42P130 Division of Income;
(225) 42P160 Taxability of Income of New Resident S Corpora-
tion Income - Nonresidents (rev 1/10/89);
(226) 42P182 Alimony Deduction - Nonresident;
(227) 42P220 Loss Carry-forward by New Resident (rev
12/1/90);
(228) 42P280 Premature Withdrawal of Individual Retirement
Account IRA - Penalty Tax (rev 12/1/90);
(229) 42P290 Individual Retirement Account - Part-year Resi-
idents and Full - Year Nonresidents (rev 12/1/100);
(230) 42P320 Moving Expense Deduction - Part-year Resident
(rev 12/1/90);
(231) 72P105 Definition of Compressed Natural Gas (rev
1/4/98);
(232) 71P010 Date for Computing Usage Tax (rev 12/1/86);
(233) 71P015 Tax Based on Manufacturer's Suggested Retail
Price;
(234) 71P016 Taxability of Accessories and Equipment

Mounted on a Truck Chassis;
(235) 71P020 Credit for Tax Paid in Another State (rev
3/31/94);
(236) 71P025 Tax-exempt Transfers;
(237) 71P030 Credit for Tax Previously Paid (rev 12/1/94);
(238) 71P040 Two Names on the Same Registration;
(239) 71P060 Stolen Vehicles;
(240) 71P070 Repossessions;
(241) 71P071 Credit for Tax Paid Another State (rev 11/30/92);
(242) 71P080 Trade-ins;
(243) 71P085 Trade-in Credit;
(244) 71P110 Incorrect Statement of Origin Issued;
(245) 71P120 Military Exemption;
(246) 71P130 Motorcycle Registration

ERNIE FLETCHER, Governor
R B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 31, 2006
FILED WITH LTCF: February 1, 2006 at 10 a.m.
CONTACT PERSON, Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6755.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person, Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: Previously, the department issued policies and circulars that predated the enactment of KRS Chapter 13A (requiring that such actions be done only by an administrative regulation) and that conflict with current tax laws. This administrative regulation provides that those previously-issued policies and circulars are withdrawn and shall not be utilized or enforced in Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation removes the ambiguity concerning the status of these out-of-date policies and circulars.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These policies and circulars, although void, have never been officially withdrawn. This administrative regulation will clarify that all of the policies and circulars have been abrogated by KRS Chapter 13A.
(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: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In theory, no one is affected. These policies and circulars have been voided since the passage of KRS Chapter 13A. However, this administrative regulation clarifies this fact for all taxpayers.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will provide further clarification for all taxpayers as to the status of these policies and circulars.
(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 imple-
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(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. 

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

(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation. This administrative regulation is the wholesale repeal of policies and circulars. As such, there are no separate "tiers" to regulate.

STATEMENT OF EMERGENCY

103 KAR 15:020E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet’s Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency administrative regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

Ernie Fletcher, Governor
R. B. Rudolph, Jr., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 15:020E. Election to pay share of tax on behalf of corporation.

RELATES TO: KRS 141.040(9)

STATUTORY AUTHORITY: KRS 141.050(4), 141.040(9)(b)

EFFECTIVE: February 1, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) and 141.040(9)(b) require the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. This administrative regulation explains the method for electing to pay the member's, partner's, or shareholder's proportionate share of the tax imposed by KRS 141.040.

Section 1. Definitions. (1) "Pass-through entity" means any corporation identified in KRS 141.010(24)(b) to (h), except a corporation required to be included in a consolidated return under the provisions of KRS 141.200.

(2) "Proportionate share of tax due" means the member's, partner's or shareholder's pro rata share of the total of the pass-through entity's tax due under KRS 141.040 after the application of any credits taken by the corporation but not less than the required minimum tax imposed by KRS 141.040(9).

Section 2. Election to Pay Proportionate Share of Tax Due. (1) For taxable years ending on or after December 31, 2005, a member, partner or shareholder may file with the pass-through entity before the due date of the entity's annual return, including extensions, a signed notarized statement of intent to pay the member's, partner's or shareholder's proportionate share of tax due.

(2) The statement shall include the following:

(a) The tax period for which the statement is valid;

(b) An acknowledgement of liability for the proportionate share of tax due for the tax period, including any additional tax due that results from audit adjustments or amended returns filed by the pass-through entity;

(c) An acknowledgement of the jurisdiction of the Commonwealth to collect on the member's, partner's, or shareholder's proportionate share of tax due from audit adjustments or amended returns filed by the pass-through entity; and

(d) The payment method.

(3) The following serves as an example of an election:

"I, ______________________ on behalf of myself (or as representative of ______________________), agree to pay the proportionate share of tax due for the tax period ending ____________, and any additional tax assessments from audit adjustments or amended returns filed by the pass-through entity. I agree that ______________________ (Name of pass-through entity) may deduct from funds available to me as a member, partner, or shareholder if I fail to promptly pay the proportionate share of tax due. I also agree that any refunds resulting from audit adjustments or amended returns filed by the pass-through entity shall be issued by the department to the pass-through entity. I agree that I am subject to jurisdiction of the courts of the Commonwealth of Kentucky for collection of any tax penalty and interest due."

(4) The pass-through entity shall maintain the original statements and make copies available to the department upon request.

Section 3. Filing Requirements. (1) The pass-through entity, on or before the 15th day of the month after the end of its taxable year or by its extended due date, shall:

(a) File with the Department of Revenue as part of the pass-through entity's annual return, a statement identifying the name, address, and Social Security number or federal identification number of each electing member, partner, or shareholder.

(b) Provide each electing member, partner, or shareholder with a statement showing the member's, partner's or shareholder's proportionate share of tax due;

Section 4. Payment of Tax Due. (1) The pass-through entity shall collect and remit the amount of tax due from each electing member, partner or shareholder and remit the tax due with the original tax return.

(2) The election shall be void if the payment of tax is not remitted with the pass-through entity's timely filed annual return. The pass-through entity shall remain liable for the entire tax liability.

Section 5. Audit Adjustments and Amended Returns. (1) The pass-through entity shall collect and remit on behalf of each electing member, partner, or shareholder additional tax including penalties and interest, if applicable, that results from audit adjustments or amended returns filed by the entity.

(2) Overpayments resulting from audit adjustments or amended tax returns filed by the entity shall be issued to the pass-through entity. The entity shall distribute the proportionate share of overpayment to each electing member, partner, or shareholder.

R.B. RUDOLPH, Secretary
APPROVED BY AGENCY January 27, 2006
FILED WITH LRC: February 1, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation explains the method for electing to pay the member's, partner's, or shareholder's proportionate share of the tax imposed by KRS 141.040.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to provide guidance on changes in pass-through entity and partnership income tax brought about by the 2005 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.050(4) and 141.040(9)(b) require the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides to the member, partner, or shareholder the method and format for electing to pay the proportionate share of tax.

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

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

(b) The necessity of the amendment to this administrative regulation: 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 members, partners, and shareholders of pass-through entities affected by KRS 141.040 and their corresponding entities.

(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: They are being provided proper procedure and formatting for making the payment election.

(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: 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: None

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

(2) TIERING: Is tiering applied? Tiering was not used because this administrative regulation already applies only to a subset of taxpayers, who are treated equally under the corresponding statute.

**STATEMENT OF EMERGENCY**

103 KAR 15:100E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.
(2) To compute the limitation, an individual shall for each PTE corporation:
(a) Compute tax on the individual’s Kentucky taxable income using the tax rates in KRS 141.020.
(b) Compute tax on the individual’s Kentucky taxable income minus the amount of income taxed on the PTE corporation’s return using the tax rates in KRS 141.020.
(c) Subtract the tax computed in paragraph (b) of this subsection from tax computed in paragraph (a) of this subsection. This is the tax savings if Income attributable to doing business in this state by the PTE corporation is ignored.
(d) Identify the amount of nonrefundable corporation tax credit reported by the PTE corporation.
(e) Select as the nonrefundable credit the lesser of paragraph (c) or (d) of this subsection.
(3) Unused credit shall not carry forward.

Section 5. Estates, Trusts, or General Partnerships (1) Estates, trusts, or general partnerships shall be treated as individuals for purposes of distributions from a PTE corporation.
(2) Credits accruing to a partner, shareholder, or member that is an estate or a trust shall be:
(a) Used to reduce tax owed by the estate or trust on income received from a PTE corporation subject to the limitation in Section 3(2) of this administrative regulation; or
(b) Distributed to the beneficiaries if the income received from a PTE corporation is distributed.
(3) Estates, trusts, or general partnerships shall provide their beneficiaries or partners the amount of income apportioned to Kentucky and taxed under KRS 141.040, the amount of refundable credit, and the amount of nonrefundable credit it receives from a PTE corporation for purposes of computing the nonrefundable credit limitation.

Section 6. Corporations. A corporation which is itself a partner or member in a PTE corporation is not entitled to claim the refundable or nonrefundable credit.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 131.130(1), 141.018, and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation explains the nonrefundable and refundable corporation income tax credits enacted by 2005 Ky. Acts ch. 168.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement tax modernization enacted by the 2005 Kentucky General Assembly and comply with KRS 131.130(1), 141.018, and 141.050(4).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: 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. Pass-through entities with limited liability protection that are subject to the corporation income tax imposed by KRS 141.040, Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040, and tax return preparers who prepare tax returns for pass-through entities with limited liability protection that are subject to the corporation income tax imposed by KRS 141.040, and Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040. The Department of Revenue will be affected to the extent that it administers the nonrefundable and refundable corporation income tax credits authorized by KRS 141.420.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation or enforcement of this administrative regulation, if new, or by the change if it is an amendment: Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 will benefit from being able to correctly compute a credit against the tax due on distributive share income received from a pass-through entity subject to the corporation income tax imposed by KRS 141.040.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: 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, because the requirements of this regulation relating to Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 apply to every applicable taxpayer.

STATEMENT OF EMERGENCY
103 KAR 15:140E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet’s Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will not delay the timely filing of tax returns and payment of the
Section 5. Electronic Filings for General Partnerships. (1) Each general partnership claiming the biodiesel tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.

(2) The electronic filing shall contain:
   (a) Each partner's name, address, telephone number, and identification number.
   (b) The partner's distributive share.
   (c) Any information required by subsection (2) of this section filed as a separate document attached to the electronic mail message shall be in plain format text or plain ASCII format.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
   (a) "Schedule BIO - Application and Credit Certificate of Income Tax Credit Biodiesel (Form 41A720BIO)", October 2005; and
   (b) "Schedule BIO (K-1) - Distributive Share of Approved Biodiesel and/or Blended Biodiesel Tax Credit - Form number 41A720BIO (K-1)", October 2005.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 31, 2006
FILED WITH LRC: February 1, 2006 at 11:11 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation provides the procedure for an applicant to claim a nonrefundable credit to producers of biodiesel or a blend of biodiesel and petroleum diesel to produce a biodiesel blend of which at least 2% is biodiesel. It further describes the information that a general partnership is required to file electronically identifying its partners and the amount of credit to which each is entitled under KRS 141.422 to 141.425.
   (b) The necessity of this administrative regulation: KRS 141.425 requires the Department of Revenue to promulgate regulations regarding the application for this tax credit. The Department has prepared a form on which applications must be requested.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130, 141.018 and 141.425 authorize the Department of Revenue to promulgate regulations necessary to enforce this tax credit.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides the procedure for requesting the tax credit. It also provides the filing requirements that a general partnership must follow to identify its partners and the amount of credit to which they would be entitled.
   (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 regulation has no effect on existing administrative regulations.
   (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 will affect any individual subject to Kentucky individual income tax and any entity subject to Kentucky
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corporation tax that is a producer of biodiesel or blended biodiesel.
(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 foregoing individuals must file a return requesting a credit.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The Department will incur initial costs of printing forms and labor costs of processing forms and reviewing applications.
(b) On a continuing basis: The Department will incur continuing costs of printing forms and labor costs of processing and reviewing applications.
(6) 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: There will be an increase in costs related to the printing of forms and review and processing of applications.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.
(9) TIERING: Is tiering applied? Tiering was used to the extent that various groups of taxpayers (individuals, corporations, general partnerships) must file in different manners to meet the provisions of the statutory authority and to provide the required information.

STATEMENT OF EMERGENCY
103 KAR 16:020E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:020E. Qualified exempt organization under KRS 141.040(8)(e).

RELATES TO: KRS 141.040

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.040

EFFECTIVE: February 10, 2006

NECESSITY, FUNCTION AND CONFORMITY: KRS 141.040(8) provides special rules for calculating taxable net income, gross receipts or Kentucky gross profits for corporations listed in KRS 141.010(24)(b) to (h) that are owned in whole or in part by a qualified exempt organization. This administrative regulation further explains the term "qualified exempt organization."

Section 1. Qualified exempt organization. As used in KRS 141.010(8), the term "qualified exempt organization" shall exclude any entity created primarily for tax avoidance purposes, with no legitimate business purpose.

Section 2. Tax Avoidance Purposes. In determining if a corporation is created primarily for tax avoidance purposes, the Department of Revenue shall consider:
(1) The corporation has an identifiable place of business with supporting business records;
(2) The corporation maintains books and related accounting records;
(3) The corporation has a staff of employees or engaged contractors adequate in number and with sufficient expertise to conduct its business affairs;
(4) The corporation's finances, policies, and business activities are so controlled and dominated by its parent corporation that the corporation has virtually no separate existence;
(5) The form employed by the corporation for doing business is a sham; and
(6) A reasonable possibility of the corporation of obtaining a profit exists, apart from achieving tax benefits.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6783.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation further explains the term "qualified exempt organization."
(b) The necessity of this administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization Plan.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.040 authorizes the promulgation of administrative regulations to further define "qualified exempt organization."
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation further explains the term "qualified exempt organization" for the purposes of corporation income tax.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. These questions do not apply.
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any organization paying corporation income tax.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation provides further guidance to corporation income tax payers regarding qualified exempt organization.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None.
(b) On a continuing basis: None.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.
(7) Provide an assessment of whether an increase in fees or
Statement of Emergency

103 KAR 16:060E

This emergency administrative regulation is promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 enacted by the Governor on March 18, 2005. The Finance and Administration Cabinet’s Department of Revenue is required by KRS 141.018 and 141.059(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency administrative regulation are due on or after April 15, 2006. An ordinary administrative regulation is insufficient because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

Ernie Fletcher, Governor
R. B. Rudolph, Jr., Secretary

Finance and Administration Cabinet
Department of Revenue
Division of Income Taxation
(Emergency Amendment)

103 KAR 16:060E. Income classification; business and nonbusiness.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.130(1) [Chapter 13A]
EFFECTIVE: February 1, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120
[The Kentucky income tax law] contains provisions for assigning to Kentucky the business income and nonbusiness income of multistate corporations. This administrative regulation establishes criteria for classification of corporate income into its business and nonbusiness components.

Section 1. Definitions. (1) "Acquisition" means the act of obtaining an interest in property.
(2) "Allocation" means nonbusiness income specifically assigned or allocated to one (1) or more specific jurisdictions.
(3) "Apportionment" means business income divided among jurisdictions by use of the three (3) factor formula in KRS 141.120(3).
(4) "Business Income" is defined in KRS 141.120(1)(a).
(5) "Disposition" means the act of the power to relinquish or transfer an interest in or control over property to another, in whole or in part.
(6) "Integral part" means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part. A manner which materially contributes to the production of business income.
(7) "Management" means the oversight, direction, or control, directly or by delegation, of the property for the use or benefit of the trade or business.
(8) "Nonbusiness income" is defined in KRS 141.120(1)(e).
(9) "Tiering" is an application of tiering is not applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers in that group.

Section 2. Determination of Business Income. In determining whether income is business income, the Department of Revenue shall apply both the transactional test and the functional test.

Section 3. Transactional Test. Business income arising from transactions and activities in the regular course of the taxpayer's trade or business.
(1) If the transaction or activity is in the regular course of the taxpayer’s trade or business, part of which trade or business is conducted within Kentucky, the return of income from the transaction or activity is business income for Kentucky. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Kentucky.

Section 4. Functional Test. Business income also includes income from tangible and intangible property, including any interest in, control over, or use in the property held directly, beneficially, by contract, or otherwise, that materially contributes to the production of business income, if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations.

Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer’s own particular trade or business. It is sufficient if the property from which the income is derived is, or was an integral, functional, or operational component used in the taxpayer’s trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is conducted within Kentucky.
asset and is instead held by the taxpayer’s trade or business ex-
clusively for investment purposes, has lost its character as a busi-
ness asset and is not subject to the rule of the preceding sentence.
Property that was an integral part of the trade or business is not
considered converted to investment purposes merely because it is
held for sale.

(2) Income that is derived from isolated sales, leases, assign-
ments, licenses, and other infrequently-occurring dispositions,
transfers, or transactions involving property, including transactions
made in liquidation or the winding-up of business, is business in-
come, if the property is or was used in the taxpayer’s trade or busi-
ness operations, unless the property has been converted to non-
business use. Income from the licensing of an intangible asset
(whether or not a patent or trademark, service mark, know-how,
trade secrets, or the like) that was developed or acquired for use
by the taxpayer in its trade or business operations, constitutes
business income whether or not the licensing itself constituted
the operation of a trade or business and whether or not the taxpayer
remains in the same trade or business from or for which the intan-
gible asset was developed or acquired.

(3) Under the functional test, income from intangible property is
business income if the intangible property serves an operational
function as opposed to solely an investment function. The intangi-
ble property serves an operational function if it is or was held in
furnishance of the taxpayer’s trade or business as evidenced by
the objective characteristics of the intangible property’s use or
acquisition and its related to the taxpayer’s trade or business op-
erations. The functional test is not satisfied where the holding of
the property is limited to solely an investment function for a period
of five (5) years or more.

(4) If the property is or was held for furnishance of the tax-
payer’s trade or business, then income from that property may be
business income, even though the actual transaction or activity
involved in that property that gives rise to the income does not occur
in Kentucky.

(5) Any item of property shall be presumed integral to the taxa-
tee’s trade or business operations if the taxpayer:
(a) Takes a deduction from business income that is apportioned
to Kentucky; or
(b) Includes the original cost in the property factor.
No presumption arises from the absence of any of these actions.

(6) Application of this test is generally unaffected by
the form of the property (e.g., tangible or intangible property, real
or personal property). Income arising from an intangible interest as,
for example, corporate stock or other intangible interest in a busi-
ness or a group of assets, is business income if the intangible itself
or the property underlying or associated with the intangible is or
was an integral, functional, or operative component to the tax-
payer’s trade or business. However, income earned from transac-
tions involving intangible property as business income may be sup-
ported by a finding that the issuer of the intangible property and
the taxpayer are engaged in the same trade or business, establish-
ement of such a relationship is not the exclusive basis for conclud-
ing that the income is subject to appor-
tionment. It is sufficient to support the finding of appropriated in-
come if the holding of the intangible interest served as operational
asset.

Section 5. Relationship of Transactional and Functional Tests
to U.S. Constitution. The Due Process Clause and the Commerce
Clause of the U.S. Constitution restrict states from apportioning
income that has no rational relationship with the taxing state. Satis-
faction of either the transactional test or the functional test com-
plies with this constitutional requirement, because each test re-
quires that the transaction or activity (in the case of the transac-
tional test) or the property (in the case of the functional test) be
held to the same trade or business that is being conducted within
this state.

Section 6. For taxable years beginning after December 31,
2004, corporations defined in KRS 141.010(24)(a) to (f), limited
liability entities, limited partnerships, and S corporations, shall
include as part of their calculation of taxable income, separately
stated items of distributive share income. The separately-stated
items of distributive share income shall be deemed business in-
come if the items meet the transactional test, functional test, or a
holding period of less than five (5) years in the case of an invest-
ment.

Section 7. Expenses Related to Nonbusiness or Nontaxable Income. (1) KRS 141.010(13)(d) requires that any deduction al-
lowed under Chapter 1 of the Internal Revenue Code shall be re-
duced by expenses directly or indirectly related to nontaxable or
nonbusiness income. If actual expenses, including interest, salar-
ies, general and administrative, and other stewardship expenses,
cannot be related directly to such income, one (1) of the following
formulas shall be used:
(a) Ratio of nonbusiness/nontaxable assets to total assets times interest expense. Interest expense represents all expenses incurred in the stewardship or maintenance of nonbusiness or
nontaxable assets. Other expenses may be used which more fairly
reflect expenses attributable to the income or assets producing the
nonbusiness/nontaxable income. Assets shall be valued at cost,
and the investment account shall exclude equity.
(b) If the total nonbusiness/nontaxable income does not ex-
ceed fifty (50) percent of the total gross receipts, the expenses not
deductible in method one (1) above may be reduced proportion-
ately but not to exceed fifty (50) percent of the calculated ex-

cpenses.
(c) 1.75 percent of the cost of assets producing nonbusi-
ness/nontaxable income;
(d) Ratio of nonbusiness/nontaxable income to total gross
receipts times interest expense, officers’ salaries, and general
administrative expenses. The sum of these or any reasonable
combination of these expenses; and
(e) A flat percentage, one (1) percent to 100 percent, of non-
business/nontaxable income. The percentage used shall be rea-
sponsible and reflect the expenses attributable to the stewardship or
maintenance of the assets producing such income.
(2) KRS 141.010(13)(d) requires a corporation to relate ex-

denses to nonbusiness and nontaxable income. The formulas
tied in subsection (1)(a) to (e) of this section for determining re-
lated expenses are formulas the department has found to be fair
and reasonable and may either be used by the corporation to as-
sist the corporation in developing a method more suitable to its
particular situation. On audit by the department, the formula or
expenses related to nonbusiness/nontaxable income of the tax-
payer, are subject to review and possible adjustment even though
one (1) of the formulas above was used. [The word “apportion-
ment” generally refers to the division of net income among states
by the formula containing apportionment factors; and the word
“allocation” generally refers to assignment of net income to a state.

"Business income" is income arising from transactions and activi-
ties in the regular course of the corporation’s trade or business and
includes income from tangible and intangible property, its dis-
sposition, management, or disposition constitutes integral parts of
the corporation’s trade or business. The following are rules and

taxes for determining whether a particular type of income is busi-

ness or nonbusiness income.

(1) Rents and royalties; real and tangible personal property.
Rental and royalty income from real and tangible property is busi-

ness income if the rental or lease of such property is a principal
business activity, or the rental or lease of the property is related to

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or incidental to the principal business activity.
(a) Example: the corporation operates a multistate car rental business. The income from car rentals is business income since it is the corporation's principal business.
(b) Example: the corporation is in the heavy-construction business and it uses equipment such as cranes, tractors, and earth-moving vehicles. The corporation incurs short-term losses on the equipment when particular pieces of equipment are not needed on a project. The rental income is business income.
(c) Example: the corporation operates a multistate chain of men's clothing stores. It purchases a five- (5) story office building primarily for use in its principal business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two- (2) floors are leased to others. The rental income is business income.
(d) Example: the corporation operates a multistate chain of men's clothing stores. It invests in a twenty (20) story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining eighteen (18) floors are leased to others. The net rental income is nonbusiness income.
(e) Example: the corporation constructs a plant in 1930 as a part of its multistate manufacturing business. On June 30, 1970, the plant is fully completed and put into production. The plant is sold from July 1, 1970, until sold in November, 1971. The rental income is business income and the gain on the sale of the plant is business income.
(f) Example: the corporation operates a multistate chain of grocery stores and purchases, as an investment, an office building in another state with surplus funds and leases the entire building to others. The net rental income is nonbusiness income.
(g) Example: the corporation constructed a plant in 1930 as a part of its multistate manufacturing business. On June 30, 1970, the plant is fully completed and put into production. The plant is sold from July 1, 1970, until sold in November, 1971. The rental income is business income and the gain on the sale of the plant is business income.
(h) Example: the corporation is engaged in extracting natural resources. The corporation owns and operates leases and explores mines or wells which are located in several states. For various reasons, the corporation ceases actual operation of the properties and leases or subleases mineral rights to others. Royalties are paid to the corporation by the operators based on units extracted. The royalty income is business income.
(i) Example: the corporation is engaged in lumber and related wood products business. It acquires a timber acreage in various states. The corporation owns leases timber lands which are used as raw materials for its lumber business. Some of the land is unsuitable and the corporation leases subleases mineral rights to other parties. Royalties are paid to the corporation based on units extracted. The royalty income is business income.
(j) Example: the corporation acquires undeveloped land for future expansion of its multistate manufacturing business. The expansion plans are later discarded and mineral rights under the land are leased to others. The corporation receives royalties based on units extracted. The royalty income is nonbusiness income.
(k) Example: in conducting its multistate manufacturing business, the corporation systematically replaces automobiles, machinery, and other equipment. The gains or losses resulting from the sale or exchange of property are treated as follows.
(a) Example: the corporation constructed a plant in 1930 as a part of its multistate manufacturing business. In 1971, the property is sold at a gain while it is in operation by the corporation. The gain is business income.
(b) Example: the corporation constructed a plant in 1930 as a part of its multistate manufacturing business. On June 30, 1970, and put up for sale but was not sold until November, 1971. The gain is business income.
(c) Example: the corporation constructed a plant in 1930 as a part of its multistate manufacturing business. On October 31, 1970, the plant is put up for sale but is not sold until November, 1971. The gain is business income.
(d) Example: the corporation constructed a plant in 1930 as a part of its multistate manufacturing business. On June 30, 1970, and put up for sale but was not sold until November, 1971. The gain is business income.
(e) Example: the corporation operates a multistate chain of grocery stores. It owned an office building which is occupied as its corporate headquarters. Because of inadequate space, the taxpayer acquired a new and larger building for its corporate headquarters. The old building was rented to an investment company under a five (5) year lease. Upon expiration of the lease, the building was sold at a gain (or loss). The gain (or loss) is nonbusiness income and the rental income received over the lease period is nonbusiness income.
(f) Interest income is business income if the intangible which earned the interest arises out of or was created by a business activity of the corporation and when the purpose for acquiring the intangible is directly related to the business activity.
(g) Example: the corporation operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time price differentials are received with installment sales and revolving charge accounts. The interest income is business income.
(h) Example: the corporation operates a multistate manufacturing business. The taxpayer receives a fair market value and collects a judgment against the debtor. Both the tax refund and the judgment are interest. The interest income is business income.
(i) Example: the corporation operates a multistate manufacturing and wholesaling business. It maintains special accounts to cover such items as workers' compensation claims, rain and storm damage, machinery replacement, etc. The funds in those accounts are invested at interest. Generally, the corporation temporarily invests funds intended for payment of federal, state and local tax obligations. The interest income is business income.
(j) Example: the corporation operates a multistate money order and traveler's check business. In addition to the fees received from selling money orders and traveler's checks, the corporation earns interest income by investing the funds pending their redemption. The interest income is business income.
(k) Example: the corporation operates a multistate manufacturing and wholesaling business. It usually has working capital and extra cash totaling $200,000 which it regularly invests in short-term interest-bearing securities. The interest income is business income.
(l) Example: in January the corporation sold all the stock of a subsidiary for $200,000. The funds are placed in a separate interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is nonbusiness income.
(m) Dividends received after December 31, 1969, are excluded from Kentucky gross income by an amendment to KRS 141.019.
(n) Patent and copyright royalties. Patent and copyright royalties are business income if the patent or copyright was created or used as a part of the corporation's principal business.
(o) Example: the corporation operates a multistate business of manufacturing and selling industrial chemicals. In connection with that business, it obtained patents on certain of its products. It licensed the production of these products in foreign countries and receives royalties. The royalties are business income.
(p) Example: the corporation operates a music publishing business and holds copyrights on numerous songs. The corporation acquires the assets of a small publishing company, including music copyrights. These acquired copyrights are then used in its business. Any royalties received on these copyrights are business income.
(q) Example: same as last example except that the acquired company also held the patent on the phonograph needle. The corporation does not manufacture or sell phonograph or phonograph equipment. Any royalties on the patent are nonbusiness income.

Section 9 [6] Proration of Deductions. Any allowable deduc-
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Section 9, Revenue Policy 51P150 "Expenses Related to Nonbusiness Nontaxable Income", is withdrawn, since the policy has been incorporated into this regulation.

Section 10. The amendments to this administrative regulation shall apply to tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 27, 2006
FILED WITH LRC: February 1, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 185B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

1. Provide a brief summary of:
   a. What this administrative regulation does: This administrative regulation establishes criteria for classification of corporate income into its business and nonbusiness components and clarifies that Kentucky follows both the transactional and functional tests.
   b. The necessity of this administrative regulation: This administrative regulation further qualifies a provision of the Governor's tax modernization legislation.
   c. How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration of tax statutes.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes criteria for classification of corporate income into its business and nonbusiness components and clarifies that Kentucky follows both the transactional and functional tests.

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 changes are clarifications needed in light of the change in the Kentucky nexus standard.
   b. The necessity of the amendment to this administrative regulation: In 2005, the General Assembly changed the nexus standard in Kentucky. This administrative regulation is necessary to provide guidance on a portion of those changes.
   c. How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the ease of administration of Kentucky tax statutes.
   d. How the amendment will assist in the effective administration of the statutes: This administrative regulation will help taxpayers determine what is business income and what is nonbusiness income under KRS 141.120.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: Any individual trying to determine Kentucky nexus will be affected.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment should provide more detailed criteria for the administration of this new nexus standard.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
   a. Initially: None
   b. On a continuing basis: None
   c. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds will be used for enforcement.

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 increased fees or funding will be necessary.

7. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

9. TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers in that group.

STATEMENT OF EMERGENCY

103 KAR 16:090E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 16, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNEST FLETCHER, Governor
R. B. RUDOLPH, Jr., Secretary

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation

103 KAR 16:090E. Apportionment; payroll factor.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.130(1)
EFFECTIVE: February 10, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(6) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). This regulation provides a detailed explanation of the payroll apportionment factor.

Section 1. Compensation. (1) Compensation does not include payments to an independent contractor or any other person not property classifiable as an employee. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the corporation in return for personal services, if such amounts constitute income to the recipient under KRS 141.010(12) and (13).

(2) The total amount paid or payable for compensation during the taxable year shall be determined by the corporation's accounting method. If the corporation has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the corporation's method of accounting, compensation paid to employees may be included in the payroll factor by the cash method if the corporation is required to report compensation under such method for unemployment compensation purposes. The corporation shall be consistent in the
treatment of compensation paid in filing returns or reports to all states. If the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

(3) Compensation paid to employees whose services are performed entirely in a state where the corporation is exempt from taxation, for example, by Pub.L. 88-272, codified as 15 U.S.C. §§ 361 to 364, shall be included in the denominator of the payroll factor.

(4) An individual shall be considered an employee if the individual is included by the corporation as an employee for purposes of the payroll taxes imposed by 26 U.S.C. 3121(d). Independent contractors shall not be considered employees.

Section 2. Payroll Factor-Numerator. (1) If compensation paid to employees is included in the payroll factor by the cash method of accounting, or if the corporation is required to report compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the corporation to Kentucky for unemployment compensation purposes constitutes compensation paid in Kentucky except for compensation excluded by this regulation. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Kentucky for unemployment compensation purposes.

(2) In determining if a service performed without Kentucky is incidental to the employee's service in Kentucky, a service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction shall be considered an incidental service.

(3) In determining where the employee's base of operations is located, the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the corporation or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of the employee's trade or profession at some other point or points, shall be considered to be the base of operations.

(4) The place from which the power to direct or control is exercised by the corporation shall be the place from which the service is directed or controlled.

Section 3. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1558 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation explains the payroll factor used in calculating the business income of multi-state corporations.

(b) The necessity of this administrative regulation: This regulation is necessary to comply with changes in the corporation income tax laws brought about by HB 272 enacted in the 2005 General Assembly.

(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 setting out the payroll factor calculation necessary to comply with the Kentucky corporation income tax law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Multistate taxpayers with payroll in Kentucky will now have guidance for calculating the payroll factor of business income.

(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: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers of corporate income tax that apportion income will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative, if new, or by the change if it is an amendment: They will have guidance necessary to comply with changes in the law.

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

(a) Initially: There will be minimal costs to distribute any notification of the regulatory guidelines to the various industries and to amend forms.

(b) On a continuing basis: There will be no additional costs to the existing administrative responsibilities of the Department of Revenue in assisting taxpayers with their corporate income tax responsibilities.

(6) What is the source and funding to be used for the implementation and enforcement of this administrative regulation: The Department of Revenue will use normal operating funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding is necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is unnecessary with this administrative regulation, because all taxpayers who apportion income are affected equally to the extent the tax changes apply to them.

STATEMENT OF EMERGENCY
103 KAR 16:200E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency administrative regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Emergency Amendment)

103 KAR 16:200E. Consolidated Kentucky corporation income tax return.

RELATES TO: KRS 141.200
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)
EFFECTIVE: February 3, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to carry out the provisions of any and all provisions of KRS Chapter 141. KRS 141.200 establishes the conditions for the filing of a consolidated return. KRS 141.050(4) requires the Department to establish required income tax forms. This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.200, with respect to elective consolidated returns.

Section 1. Definitions. (1) "Combined return" means a Kentucky corporation income tax return by which Kentucky taxable income is reported and attributed to members of a unitary business group using the unitary business concept.
(2) "Common parent corporation" means the member of an affiliated group:
(a) That directly owns stock meeting the requirements of Section 1504(a)(2) of the Internal Revenue Code in at least one (1) other member of the affiliated group; and
(b) Whose stock is not owned directly by any other member of the affiliated group as required by Section 1504(a)(2) of the Internal Revenue Code.
(3) "Electronical period" means a period of ninety-six (96) consecutive calendar months that:
(a) Begins prior to January 1, 2005; and
(b) Begins with the first day of the first taxable year for which an election to file a consolidated return is made and ending on the last day of the taxable year which includes the 96th consecutive calendar month provided the affiliated group remains in existence in accordance with Treasury Regulation sec. 1.1502-75(d).
(4) "Exempt from taxation" means the corporations listed in KRS 141.040(1)(a) through (h).
(5) "Unitary business concept" means a method of determining taxable income within a state based on the unitary business group's activities within that state.
(6) "Unitary business group" means a group of related corporations which share or exchange value as evidenced by the existence of the following characteristics:
(a) The operation of one (1) corporation is dependent upon, or contributes to, the operation of another corporation;
(b) There is a unity of ownership, operation, and use among the corporations; or
(c) The corporations exhibit functional integration, centralization of management, and economies of scale.

Section 2. Election to File a Consolidated Return. (1) General rule.
(a) An election to file a consolidated return shall be made by the common parent corporation on behalf of all members of the affiliated group by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170, for the first taxable year for which the election is made.
(b) Except as provided in subsections (2) and (3) of this section, if "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, is not filed within the period prescribed by paragraph (a) of this subsection:
1. An affiliated group shall be deemed not to have made an election; and
2. Each member of the affiliated group subject to tax pursuant to KRS 141.040 shall file a separate return pursuant to KRS 141.200 for taxable years that begin prior to January 1, 2005.

(2) Transition rules.
(a) For a taxable year beginning prior to December 31, 1995 and ending on or after December 31, 1995, if an affiliated group filed a consolidated return and did not file "Election to File Consolidated Kentucky Corporation Income Tax Return", it may elect to file a consolidated return beginning with the taxable year if it mails "Election to File Consolidated Kentucky Corporation Income Tax Return" no later than February 15, 1998, to the Department of Revenue [Cabinet], Corporation Tax Section, P.O. Box 1302, Frankfort, Kentucky 40602-1302.
(b) For a taxable year ending on or after December 31, 1995, and prior to April 5, 1996, if the members of an affiliated group filed separate returns or a combined return, the affiliated group:
1. May elect to file a consolidated return beginning with the taxable year by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", no later than February 15, 1998; and
2. Shall file a consolidated return amending the separate or combined returns no later than February 15, 1998.
(3) Taxable years following an election period.
(a) Except as provided in paragraphs (b) and (d) of this subsection, for any taxable year beginning after the expiration of the election period that ends prior to January 1, 2005, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return unless the affiliated group elects to file a consolidated return on, or prior to, the due date of the return due for a taxable year that ends prior to January 1, 2005.
(b) The filing of a consolidated return on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170 for the first taxable year that begins after the expiration of an election period [that ends prior to December 31, 1995], shall:
1. Constitute a new election to file a consolidated return; and
2. Establish a new election period.
(c) If the expiration of an election period occurs because an affiliated group ceases to exist, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return immediately following the date the affiliated group ceases to exist unless it becomes a member of another affiliated group which has elected to file a consolidated return.
(d) Any election period that expires after January 1, 2005 shall result in the members of the affiliated group being subject to the provisions of KRS 141.200(9) to (14).
(4) Effect of an election.
(a) An election to file a consolidated return shall be irrevocable and binding on both the cabinet and the affiliated group for the election period.
(b) The administrative provisions of Treasury Regulation sec. 1.1502-75(a) to (c) shall not apply for Kentucky purposes.

Section 3. Corporations Included in a Consolidated Return. (1) If a consolidated federal return is filed. If a member of the affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the corporations that:
(a) Were included in the consolidated federal return for the taxable year; and
(b) Are not exempt from taxation.
(2) If a consolidated federal return is not filed. If no member of an affiliated group electing to file a consolidated Kentucky return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the members of the affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations that are not exempt from taxation.

Section 4. Carryover or Carryback of Items of Loss, Deduction or Credit. (1) Carryover or carryback between a separate return and a consolidated return. If a separate return was filed for taxable years prior to the taxable years for which a consolidated return is
filed, and a carryover or carryback occurs between the separate return and the consolidated return, the carryover or carryback amount shall be:

(a) Limited as provided by Section 1502 of the Internal Revenue Code and related regulations; and
(b) Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

(2) Carryover or carryback between a combined return and a consolidated return.

(a) A combined return shall be deemed a consolidated return for the purpose of determining a carryover or carryback amount, if a:

1. Combined return using the unitary business concept was filed for taxable years ending on or before December 30, 1995, and
2. Consolidated return is filed for taxable years ending on or after December 31, 1995; and
3. Carryover or carryback occurs between the combined return and the consolidated return.

(b) The carryover or carryback amount shall be:

1. Limited as provided by Section 1502 of the Internal Revenue Code and related regulations; and
2. Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

Section 5. Deferred Intercompany Transactions. If, during a year when a separate or combined return was filed, a gain or loss on a deferred intercompany transaction was deferred for federal purposes, and was not deferred for Kentucky purposes, the gain or loss, when recognized for federal purposes, shall be adjusted for Kentucky purposes to reflect the prior reporting of the transaction.

Section 6. Corporation Income Tax Computation for Taxable Years Beginning on or After January 1, 2005 During the Ninety-Six (96) Month Election Period. For taxable years beginning on or after January 1, 2005, the amendments to KRS 141.040 enacted by Ky. Acts 2004, Ch. 189 by the 2005 General Assembly shall apply to the computation of the tax due under KRS 141.040 for the affiliated group.

Section 7. Required Forms. (1) "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall contain the following:

(a) Information identifying the affiliated group;
(b) The taxable income computation;
(c) The income tax computation;
(d) The license tax computation for tax periods ending prior to December 31, 2005;
(e) The tax payment summary; and
(f) The signature of a principal officer or chief accounting officer.

(2) "Kentucky Corporation Income and License Tax Return", Revenue Form 720, Schedule A, Apportionment and Allocation, shall be attached to Revenue Form 720, if applicable, and shall contain the:

(a) Computation of the apportionment fraction;
(b) Apportionment and allocation of income;
(c) Beginning and end of year balances of Kentucky real and tangible property; and
(d) Beginning and end of year balances of total real and tangible property.

(3) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K, shall be attached to "Kentucky Corporation Income and License Tax Return", Revenue Form 720 and shall contain the:

(a) Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070;
(b) Six (6) digit Kentucky Account Number for each corporation listed pursuant to paragraph (a) of this subsection; and
(c) Amount remitted for each corporation.

4(a) A copy of the Federal Form 7004, "Application for Automatic Extension of Time to File Corporation Income Tax Return", or "Application for (Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A720SL, shall be filed to obtain an extension of time to file "Kentucky Corporation Income and License Tax Return", Revenue Form 720 pursuant to the provisions of KRS 131.081(11), 131.170 and 141.170. Revenue Form 41A720SL shall contain the:

1. Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070;
2. Six (6) digit Kentucky Account Number for each corporation listed pursuant to paragraph (a) of this subsection; and
3. Amount remitted for each corporation.

(b) An application for extension filed pursuant to paragraph (a) of this subsection shall constitute an extension for each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070.

Section 8. [7] Filing a Consolidated Return. "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall:

(1) Be filed by the common parent corporation for the affiliated group; and
(2) Contain the following forms, if applicable, attached in the following order:

(a) "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722;
(b) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K;
(c) "Kentucky Corporation Income and License Tax Return," Revenue Form 720, Schedule A "Apportionment and Allocation Schedule";
(d) A copy of pages 1 and 4 of Federal Form 1120, U.S. Corporation Income Tax Return;
(e) Federal Form 851, Affiliations Schedule;
(f) Forms necessary to support credits reported on the consolidated return;
(g) The schedules of gross income and deductions for each member of the affiliated group prepared in columnar form in accordance with Treasury Regulations sec. 1.1502-7;
(h) Balance sheets for each member of the affiliated group prepared in columnar form in accordance with Treasury Regulations sec. 1.1502-7;
(i) The schedules of receipts, property and payroll for each member of the affiliated group shall be prepared in columnar form; and

Section 9, [8] Method of Filing a Kentucky License Tax Return. (1) If the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070, a separate "Kentucky Corporation Income and License Tax Return", Revenue Form 720, reporting the consolidated return computation shall report the separate Kentucky license tax computation for the common parent corporation.

(2) If a member of the affiliated group other than the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070, a separate "Kentucky Corporation Income and License Tax Return", Revenue Form 720, reporting the license tax computation, shall be submitted with, but not attached to, the consolidated return submitted by the common parent corporation.

(3) If the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, reporting the consolidated income tax computation for the members of the affiliated group and the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071.

(4) If a member of the affiliated group other than the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall:

(a) Report the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071; and
(b) Be submitted with, but not attached to, the consolidated
return submitted by the common parent corporation.

Section 10, [9.] Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Kentucky Corporation Income and License Tax Return and Instructions", Revenue Form 720 (2005)(2006);
(b) "Application for Six (6) Month Extension of Time to File" Kentucky Corporation Income and License Tax Return", Revenue Form 41A72OSL (2005)(2006);
(c) "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722 (2004)(2005); and
(d) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K (2005)(2006).

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law. [These forms may be obtained or inspected at the Kentucky Department of Revenue [Cabinet], 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue [Cabinet] Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: January 27, 2006
FILED WITH LRC: February 3, 2006 at noon
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does. This administrative regulation establishes forms, forms, and procedures required for the implementation of KRS 141.200, with respect to elective consolidated returns.
(b) The necessity of this administrative regulation: This administrative regulation updates effective dates for forms and procedures relating to consolidated returns.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies that elective consolidated returns apply to certain tax periods and establishes the method for transitioning to new elective consolidated returns by the listed periods.
(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 paves the way for changes brought about by tax modernization nexus changes.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because of a change in the underlying statutes.
(c) How the amendment conforms to the content of the authorizing statutes: It complies with the changes made by the 2005 General Assembly.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation updates effective dates for forms and procedures relating to consolidated returns.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer filing consolidated returns or who will required to file consolidated returns under the newly amended or enacted tax statutes.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if now, or by the change if it is an amendment: This administrative regulation should provide them with procedural clarification.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? Tiering was not applied because the requirements of the regulation already apply to a select group of taxpayers who file consolidated concerns.

STATEMENT OF EMERGENCY
103 KAR 16:210E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
[New Emergency Administrative Regulation]

103 KAR 16:210E. Calculation of gross income for corporations that are pass-through entities and treatment of certain deductions for their individual members, partners and shareholders.

RELATES TO: KRS 141.010, 141.020, 141.040, KRS 141.050, 141.207, 141.208, 141.420
STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050

EFFECTIVE: February 10, 2006

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky corporation income tax law requires pass-through entities (S-corporations, limited partnerships and limited liability companies) that are doing business in this state, to compute gross income for purposes of paying Kentucky corporation income tax. This administrative regulation establishes for pass-through entities how gross income is to be calculated. This administrative regulation also clarifies the treatment of certain deductions by individual partners, members and shareholders in limited liability pass-through entities in the computation of taxable net income.

Section 1. Gross Income of Those pass through entities taxable as corporations as defined in KRS 141 010(29)(b) to (d) shall be computed in a manner identical to that required for federal income tax purposes except as otherwise provided this administrative regulation.

Section 2. Treatment of certain deductions for individual members, partners and shareholders of corporations defined in Section 1.
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(1) Individuals shall deduct their distributive share of a corporation's depreciation and expense deduction allowed under Sections 168 and 179 of the Internal Revenue Code to compute Kentucky adjusted gross income.

(2) Individuals may deduct, subject to the limitations of the Internal Revenue Code, their distributive share of charitable contributions made by the corporation.

Section 3. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-8788.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes for pass through entities how gross income is to be calculated. This administrative regulation also clarifies the treatment of certain deductions by individual partners, members and shareholders in limited liability pass-through entities in the computation of taxable net income.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to provide guidance on changes in pass-through entity and partner income tax brought about by the 2005 GA.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.050(4) and 141.040(9)(b) require the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes for pass through entities how gross income is to be calculated. This administrative regulation also clarifies the treatment of certain deductions by individual partners, members and shareholders in limited liability pass-through entities in the computation of taxable net income.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: 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 members, partners, and shareholders of pass-through entities affected by KRS 141.040 and their corresponding entities.
(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: They are being provided with instructions as to how to make necessary calculations.
(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: 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.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering was not used because this administrative regulation already applies only to a subset of taxpayers, who are treated equally under the corresponding statute.

STATEMENT OF EMERGENCY
103 KAR 16:220E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.030(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:220E. Alternative minimum calculation.

RELATES TO: KRS 141.040
STATUTORY AUTHORITY: KRS 131.130, 141 018
EFFECTIVE: February 10, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 188 relative to the imposition of the tax assessed under this chapter on individuals, the passed-through Income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. This administrative regulation establishes criteria for computing gross receipts and gross profits for purposes of computing the alternative minimum calculation of the corporation income tax imposed by KRS 141.040.

Section 1. Alternative Minimum Calculation of Corporation's Kentucky Gross Receipts. In the case of corporations required to apportion taxable net income, the amount of Kentucky gross receipts shall equal the amount reported as the total Kentucky sales in the numerator of the sales factor pursuant to KRS 141.120(8)(c) and 103 KAR 16.270. In the case of corporations that are not required to apportion taxable net income, the amount of gross receipts shall equal the total sales of the corporation in Kentucky as determined in accordance with KRS 141.120(8)(c) and 103 KAR 16.270. The alternative minimum calculation shall be computed as follows:

(1) Add Kentucky gross receipts from sales of tangible personal property in this state reduced by returns and allowances attributable to Kentucky gross receipts. Returns and allowances...
attributable to Kentucky gross receipts shall be determined by separate accounting.

(2) Add gross receipts from sales other than sales of tangible personal property in this state;

(3) Eliminate intercompany sales of the members of the affiliate group in the case of a consolidated return filed under the provisions of KRS 141.200 in computing the consolidated alternative minimum calculation; and

(4) Multiply the total of subsections (1) and (2) of this section by $0.00095.

Section 2. Alternative Minimum Calculation of Corporation's Kentucky Gross Receipts. The alternative minimum calculation shall be computed as follows:

(1) Add Kentucky gross receipts;

(a) Reduced by returns and allowances attributable to Kentucky gross receipts. Returns and allowances attributable to Kentucky gross receipts shall be determined by separate accounting. For purposes of the gross profit calculation, a corporation that is not taxable in another state under KRS 141.010(14)(b) shall only include gross receipts attributable to Kentucky and

(b) Reduced by the cost of goods sold attributable to Kentucky gross receipts. Returns and allowances attributable to Kentucky gross receipts shall be determined by separate accounting. In determining the method specified by the Internal Revenue Service, the Internal Revenue Code, regulations explaining the Internal Revenue Code, and the other regulations or guidance issued by the Internal Revenue Service concerning the amount of goods sold allowable for federal income tax purposes shall apply; and

(2) Multiply the total of subsections (1) and (2) of this section by $0.0075.

Section 3. Comparison of Alternative Minimum Calculation Amounts. The corporation's tax liability is the greater of:

(1) The tax computation based on net income;

(2) The lesser of the alternative minimum calculation based on:

(a) Gross receipts;

(b) Gross profits; or

(c) $175

Section 4. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2008
FILED WITH LRC: February 10, 2008 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 156B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation further explains the calculation of alternative minimum for Kentucky corporation income tax.

(b) The necessity of the administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization plan. It explains the how to calculate a corporation's alternative minimum income tax.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.030(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer all tax statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Because of changes to Kentucky corporation income tax calculations, this regulation is necessary to provide guidance for the alternative minimum calculations.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. These questions do not apply.

(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: Any corporation paying corporation income tax.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation provides further guidance to corporation income tax payers regarding how to make necessary alternative minimum calculations.

(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: 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 fee or funding increase will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation, because the corporation must determine whether the income tax, the alternative minimum calculation, or $175 is the greater figure.

STATEMENT OF EMERGENCY

103 KAR 16:230E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:230E. Intangible expenses, Intangible Interest expenses and management fees.

RELATES TO: KRS 131.130, 141.205
STATUTORY AUTHORITY: KRS 131.130(1)
EFFECTIVE: February 10, 2006
NECESSITY, FUNCTION AND CONFORMITY: KRS
141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. Kentucky corporation income tax law disallows intangible expenses, intangible interest expenses and management fees when such expenses and fees are directly or indirectly paid, recovered or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related member of an affiliated group or with a foreign corporation, unless certain criteria are met. This regulation explains and provides further guidance as to when these expenses and fees are allowed or disallowed.

Section 1. Definitions. (1) "Actual comparables", means transactions between the recipient and unrelated parties involving the same intangible property to the subject transaction.

(2) "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information.

(3) "Measured, in whole or in part, by net income" means that the receipt of the payment by the recipient is reported and included in income for purposes of a tax on net income or in the franchise for purposes of the franchise tax, and not offset or eliminated in a combined or consolidated return which includes the corporation.

(4) "Reported and included in income for purposes of a tax on net income or franchise," means:

(a) For a tax on net income, reported and included in the net income apportioned or allocated to the taxing jurisdiction;

(b) For a franchise tax, reported and included in the franchise apportioned or allocated to the taxing jurisdiction.

(5) "Subject transaction" means the transaction giving rise to the intangible expense, intangible interest expense or management fee.

Section 2. Disclosure; General. As part of the required disclosure, the corporation shall provide a description of the nature of the payment made to the recipient. This description shall contain:

(1) For intangible expenses or intangible interest expenses:

(a) A narrative regarding the subject transaction;

(b) The extent of the rights being transferred (for example, if a patent is being licensed, whether that license is exclusive or non-exclusive, and whether the transferee has any rights to sublicense);

(c) How the amount of the payment is calculated; and

(d) If there is a document that sets forth the terms of the subject transaction, a copy of that document.

(2) For management fees:

(a) A narrative of the services being performed for the corporation by the recipient;

(b) How the amount of the payment is calculated; and

(c) If there is a document that sets forth the terms of the transaction, a copy of that document.

Section 3. Disclosure; Arm's Length Transaction. A corporation may be required to establish that the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction.

(1) If there are actual comparables, the actual comparables shall be used.

(2) If there are no actual comparables, the two (2) primary factors to take into account when determining whether the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction are:

(a) The degree of comparability between the subject transaction and the proposed comparable transactions; and

(b) The quality of the data and assumptions used in the analysis.

Section 4. Disclosure; Intangible Expense and Intangible Interest Expense. With respect to intangible expense and intangible interest expense, the corporation shall make additional disclosures if it cannot utilize any of the other methods to establish that it is entitled to the deduction. One (1) of those disclosures is that the corporation shall show that the payment made to the recipient and included in income for purposes of a tax on net income or franchise was subject to, its state or commercial domicile, a net income tax, or a franchise tax, measured in whole or in part, by net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States.

R. B. RODOLPH, JR., Secretary
APPROVED BY AAG, February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:

(a) What this administrative regulation does: Kentucky corporation income tax law disallows intangible expenses, intangible interest expenses and management fees when such expenses and fees are directly or indirectly paid, recovered or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related member of an affiliated group or with a foreign corporation, unless certain criteria are met. This regulation explains and provides further guidance as to when these expenses and fees are allowed or disallowed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement tax modernization enacted by the 2005 Kentucky General Assembly and comply with KRS 131.130(1), 141.018 and 141.050(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation explains and provides further guidance as to when these expenses and fees are allowed or disallowed.

(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: 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: Any corporations making direct or indirect transactions with one or more related member of an affiliated group or with a foreign corporation, unless certain criteria are met. The Department of Revenue will be affected to the extent that it administers the nonrefundable and refundable corporation income tax credits authorized by KRS 141.420.

(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 explains and provides further guidance as to when these expenses and fees are allowed or disallowed.

(5) Provide an estimate of how much it will cost to implement
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this administrative regulation:
(a) Initially: 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 purpose 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, because the requirements of this regulation relating to Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 apply to every applicable taxpayer.

STATEMENT OF EMERGENCY
103 KAR 16:24OE

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet’s Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:24OE. Nexus standard for corporations and general partnerships.

RELATES TO: KRS 141.010, 141.040, 141.206.
STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050(4)
EFFECTIVE: February 1, 2006
NECESSITY AND FUNCTION: KRS 141.040(1) requires non-exempt corporations doing business in Kentucky to pay corporation income tax and file the required tax forms for that tax. KRS 141.206 requires general partnerships doing business in Kentucky to file tax forms to compute the distribution of income to the general partners. KRS 131.130(1) asks the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky’s tax laws KRS 141.018 requires the Department of Revenue to promulgate administrative regulations necessary to implement 2005 Ky. Acts ch. 168. KRS 141.010(25) defines “doing business in this state”. This administrative regulation establishes what constitutes nexus in Kentucky under a doing business standard and provides examples.

Section 1. Definitions. (1) “Business situs” means in relation to intangible personal property:
(a) The corporation's or general partnership’s commercial domicile;
(b) The place where the intangible personal property is utilized by the corporation or general partnership; or
(c) The state where the intangible personal property is located in possession and control of the intangible personal property is localized in connection with a trade or business so that substantial use or value attaches to the property.

(2) “Commercial domicile” means the principal place from which the trade or business of the corporation or general partnership is managed.

(3) “Corporation” is defined by KRS 141.010(24).

(4) “Doing business in this state” is defined by KRS 141.010(25).

(5) “Foreign corporation” means a corporation incorporated or formed under the authority of another state or county.

(6) “Foreign general partnership” means a general partnership organized under the laws of another state or county.

(7) “General partnership” is defined by KRS 141.206(1)(a).

(8) “Owning or leasing property in this state” means owning or leasing real or tangible personal property in Kentucky. Examples of this include:
(a) Maintaining an office or other place of business in Kentucky.
(b) Maintaining in Kentucky an inventory of merchandise or material for sale, distribution or manufacture, or consigned goods, regardless of whether kept on the taxpayer's premises, in a public or rented warehouse, or otherwise.
(c) Owning computer software used in the business of a third party within Kentucky.

(9) “Qualified real estate investment trust subsidiary” is defined by Section 856(c)(2) of the Internal Revenue Code, 26 U.S.C. 856(2).

(10) “Qualified subsidiary” is defined by Section 1361(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 1361(b)(3)(B).

(11) “Related corporation” means a corporation in which another corporation or general partnership maintains an ownership interest of fifty (50) percent or more during any portion of the taxable year.

(12) “Single member limited liability company” means a limited liability company with one (1) member.

Section 2. In General: Rules of Construction. (1) For purposes of the corporation income tax imposed by KRS 141.040(1) and the filing requirement imposed on general partnerships by KRS 141.206(2), the term “doing business in this state” or “doing business” shall be used in a comprehensive sense concerning the operation of any profit-seeking enterprise or activity in Kentucky.

(2) In determining if a corporation or general partnership is doing business in Kentucky, it shall be immaterial whether the activities actually result in a profit or loss.

(3) Whether a corporation or general partnership is doing business in Kentucky shall be determined by the facts in each case.

(4) Whether the activities of a foreign corporation or general partnership fall within the scope of “solicitation” within the meaning of Pub. L. 88-272, codified as 15 U.S.C. §§ 381 to 394 shall be a factual determination. The examples in Sections 1.3 and 4 of this administrative regulation shall be used as guidelines. In applying the guidelines to the particular circumstances and activities of a foreign corporation or general partnership, the Department of Revenue shall employ the following rules of construction:
(a) The effect of the activities listed in Sections 1, 3, and 4 of this administrative regulation shall be cumulative. In determining whether a taxpayer is doing business in Kentucky, all of these activities shall be considered as a whole.
(b) If the Department of Revenue determines that a taxpayer is doing business in Kentucky, the taxpayer shall carry the burden of substantiating any claim that these activities in Kentucky do not constitute doing business under either Pub.L. 88-272, codified as 15 U.S.C. §§ 381 to 384, or the United States Constitution.
(c) Documentary evidence shall be given substantial weight in
establishing the nature and extent of the taxpayer's activities. Affidavits or other evidence not contemporaneous with the events in question shall be given little weight.

(d) The term "solicitation" shall include only actual requests for purchases and activities that are entirely ancillary to requests for purchases. An activity shall be considered entirely ancillary to the requesting of purchases if it serves no independent business purpose apart from its connection to the soliciting of orders.

(e) Activities conducted by a foreign corporation or general partnership with respect to a particular order shall not constitute "solicitation" if the activity occurs after the order has been placed.

Section 3. Exception for Solicitation Activities Protected by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384. (1) General; preemption of state law. This regulation adopts a narrow interpretation of the immunity afforded by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384, which precludes the imposition of Kentucky income tax upon a foreign corporation, or the filing requirement imposed on foreign general partnerships, if the corporation's or general partnership's sole activity in Kentucky is the corporation's or general partnership's representatives soliciting orders for the same tangible personal property in the name of the corporation or general partnership or in the name of a prospective customer if the orders are:

(a) Sent outside of Kentucky for approval or rejection; and
(b) Filled by shipment or delivery from a point outside of Kentucky.


(a) If a corporation or general partnership engages both in protected solicitation activities and in any other activity that is not a protected solicitation activity, it may not claim the immunity granted by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384.

(b) Solicitation of orders shall not be protected by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384, if the solicitation is for the following services:

1. Sale of or provision of services; or
2. Sale, lease, rental, license or other disposition of real property or intangibles.

(c) Activities normally considered to be solicitation. The activities listed in this subsection shall serve as examples of activities that ordinarily fall within the scope of "solicitation" under Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384:

(a) Soliciting orders through advertising;
(b) Carrying samples and promotional materials only for display or distribution without charge or other consideration;
(c) Soliciting orders by an in-state resident employee or representative of the company, if that person does not maintain or use any office or other place of business in the state other than an "in-home" office as described in subsection (4) of this section;
(d) Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;
(e) Checking customer inventories for reorder without a charge therefore, but not for other purposes such as quality control;
(f) Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;
(g) Conducting solicitation activities from an employee's in-home work space, if the use of the space is not paid for by the company;
(h) Performing missionary sales activities, including the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if the solicitation activities are otherwise immune;
(i) Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;
(j) Maintaining a sample or display area for an aggregate of fourteen (14) calendar days or less at any one (1) location within Kentucky during the tax year, if no other activities inconsistent with solicitation take place;
(k) Mediating direct customer complaints if the purposes are solely to ingratiate sales personnel with the customer and facilitate requests for orders;
(l) Passing orders, inquiries and complaints on to the home office;
(m) Providing automobiles to sales personnel for use solely in solicitation activities; and
(n) Owning, leasing, using or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of solicitation activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to solicitation or permitted by this Section shall not, by itself, remove the protection.

(3) Activities that are not solicitation. The activities listed in this subsection shall serve as examples of activities in this state that fall outside the scope of "solicitation" and are not protected by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384 unless de minimis within the meaning of Wisconsin Dept. of Revenue v. William Wingley, Jr., Co., 112 S.Ct. 2447 (1992)

(a) Making repairs or providing maintenance or service to the property sold or to be sold;
(b) Installing or supervising installation at or after shipment or delivery;
(c) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;
(d) Investigating credit;
(e) Repossessing property;
(f) Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation;
(g) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints if the sole purpose of the mediation is to ingratiate personnel with the customer;
(h) Approving or accepting orders;
(i) Securing deposits on sales;
(j) Picking up or replacing damaged or returned property, including state or unsaleable property;
(k) Maintaining a sample or display area for an aggregate of fifteen (15) days or more at any one location within Kentucky during the tax year;
(l) Providing technical assistance or service, including engineering assistance or design service, if one (1) of the purposes of it is other than the facilitation of the solicitation of orders;
(m) Hiring, training or supervising personnel for other than solicitation activities;
(n) Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;
(o) Carrying samples for sale, exchange or distribution in any manner for consideration or other value;
(p) Providing shipping information and coordinating deliveries;
(q) Supervising the operations of a franchisee or similar party;
(r) Monitoring, inspecting, or approving work performed by an independent contractor under a warranty or similar contractual arrangement;
(s) Consigning stock of goods or other tangible personal property for sale to any person, including an independent contractor;
(t) Filling sales orders by shipment or delivery from a point within Kentucky;
(u) Owning, leasing, maintaining or otherwise using as part of the business operations in Kentucky any of the following facilities or property:
1. Repair shop;
2. Parts department;
3. Warehouse;
4. Meeting place for directors, officers, or employees;
5. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation or
(v) Maintaining, by any employee or other representative, an office or place of business of any kind other than an in-home office. For the purpose of this subsection it is not relevant whether the
company pays directly, indirectly, or not at all for the cost of maintaining the in-home office. An office shall be considered in-home if it is located within the residence of the employee or representative, and:

1. Is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity. Factors considered in determining if an office is publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity shall include:

   a. A telephone listing or other public listing within the state for the company, or for an employee or representative of the company in that capacity, or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state;
   b. The normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone and fax numbers, and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative;
   c. The maintenance of any office or other place of business in this state that does not strictly qualify as an "in-home" office as defined in this paragraph shall, by itself, cause the loss of protection under this subsection;

2. The use of the office is limited to: soliciting and receiving orders from customers or transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Pub.L. 86-272, codified as 15 U.S.C.A. 381 to 384 or under this regulation;

   w. Entering into franchising or licensing agreements, selling or otherwise disposing of franchises and licenses, selling or otherwise transferring tangible personal property pursuant to the franchise or license by the franchisor or licensor to its franchisee or licensee within the state; or
   x. Conducting any other activity which is not entirely ancillary to the solicitation of orders, even if the activity helps to increase purchases.

Section 4. "Doing Business". An analysis to determine if a corporation or general partnership's activities fall within the provision of KRS 141.010(25), shall include the factors established in this section.

(1) The activities listed in this section shall serve as examples of "doing business" under KRS 141.010(25): (a) Performing services in Kentucky, whether directly by the corporation or general partnership or indirectly by directing activity performed by a third party; or by accepting orders in Kentucky;
   (b) Operating a professional sports team which engages in professional sports activities in Kentucky;
   (c) Owning an interest in mineral rights in Kentucky, including interests in coal, oil, or natural gas;
   (d) Leasing motion picture films to movie theaters and television stations in Kentucky;
   (e) Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;
   (f) Being a partner in a general partnership doing business in Kentucky;
   (g) Receiving income from intangible personal property if the intangible personal property has acquired a Kentucky business situs.

(2) The activities listed in this subsection shall serve as examples of "doing business" under KRS 141.010(25): (a) Performing or soliciting orders for services in Kentucky, including those services performed in Kentucky by a third party on behalf of a corporation or general partnership;
   (b) Selling or soliciting orders for real property;
   (c) Selling or soliciting orders for intangible personal property;
   (d) Selling tangible personal property; or
   (e) Delivering merchandise inventory on consignment to its Kentucky distributors or dealers.

(3) A corporation or general partnership may be considered doing business under KRS 141.010(25) without having employees in Kentucky. If activities are performed in Kentucky by a third party on behalf of the corporation or general partnership, the corporation or general partnership shall be considered doing business in Kentucky.

(a) General. The activities in this paragraph shall not, in themselves, subject a corporation to Kentucky corporation income tax or a general partnership to a Kentucky filing requirement. These exempted activities shall not relieve a corporation from Kentucky corporation income tax if the corporation is otherwise subject to Kentucky corporation income tax and shall not relieve a general partnership from a Kentucky income tax filing requirement if the general partnership is otherwise required to file a Kentucky return.

1. Mere ownership of a corporation that is doing business in Kentucky shall not subject the owner to the requirements. However, based on additional facts and circumstances, sufficient contacts with Kentucky may exist to establish that the corporation or general partnership is doing business in Kentucky. The activities listed in this subparagraph shall serve as examples of facts and circumstances that establish that the corporation or general partnership is doing business in Kentucky:

   a. Being the parent corporation of a qualified real estate investment trust subsidiary that is doing business in Kentucky;
   b. Being the parent corporation of a qualified subchapter s subsidiary that is doing business in Kentucky;
   c. Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;
   d. Being a related corporation doing business in Kentucky which is performing activities as the corporation's or general partnership's agent in Kentucky;
   e. Receiving income from a contract between a corporation or general partnership and a related corporation doing business in Kentucky if the income is derived from the related corporation's activities in Kentucky;
   f. Being a corporation that is essentially a shell corporation, or other facts indicate that an independent corporate existence is essentially disregarded;
   g. Entering into franchising or licensing agreements and receiving income from franchising or licensing agreements that have acquired a Kentucky business situs.

(b) Employee or independent agent activity. A foreign corporation or general partnership that is not otherwise doing business in Kentucky may be considered to not be doing business in Kentucky, even if its employees or independent agents are performing certain de minimis activities in Kentucky. The following items shall serve as examples of de minimis activities:

   1. A foreign corporation or general partnership sending various employees, e.g., legal staff and witnesses, to assist its independent legal counsel on defending a lawsuit in Kentucky. The law firm providing counsel shall be taxable in Kentucky;
   2. A foreign corporation or general partnership sending its employees to Kentucky to purchase raw materials and inventory;
   3. A foreign corporation or general partnership giving its highest performing sales person an expense paid vacation to Lake Barkley, Kentucky; or
   4. A foreign corporation or general partnership sending its business records to Kentucky for use by its independent auditors.

Section 5. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 27, 2006
FILED WITH LRC: February 1, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.
VOLUME 32, NUMBER 9 - MARCH 1, 2006

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

1. Provide a brief summary of:
   (a) What this administrative regulation does: KRS 131.130(1), 141.018, and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation explains the nexus standard for corporations and general partnerships.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 131.130(1), 141.018, and 141.050(4).
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation explains what business activities in Kentucky establish the Commonwealth's income tax jurisdiction over foreign corporations or foreign general partnerships.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
   (b) The necessity of the amendment to this administrative regulation: 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: Foreign corporations that are subject to the corporation income tax imposed by KRS 141.040, foreign general partnerships subject to the filing requirement imposed on general partnerships by KRS 141.206, owners of foreign corporations that are pass-through entities subject to the corporation income tax imposed by KRS 141.040, partners in foreign general partnerships that are subject to the filing requirement imposed on general partnerships by KRS 141.206, tax return preparers, tax accountants, and tax lawyers. The Department of Revenue will be affected to the extent that it administers the corporation income tax and the filing requirement imposed on general partnerships.
   (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: Foreign corporations and foreign general partnerships that are either subject to the corporation income tax imposed by KRS 141.040, or the filing requirement imposed on general partnerships by KRS 141.206 will be required to file a Kentucky corporation income tax return or a Kentucky general partnership tax return.

The Department of Revenue will not incur additional costs as the result of this regulation.

What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue funds.

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

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 because the requirements of this regulation apply to foreign corporations and foreign general partnerships that are doing business in Kentucky.

STATEMENT OF EMERGENCY

103 KAR 16:250E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2005. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:250E. Net operating loss deduction for corporations.

RELATES TO KRS 141.011, 141.200
STATUTORY AUTHORITY: KRS 131.130, 141.018
EFFECTIVE: February 10, 2006
NECESSITY, FUNCTION AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky Acts ch. 168 relative to the imposition of the tax assessed under this chapter on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. This administrative regulation establishes methods of computing a corporation's net operating loss deduction and application of the deduction to prior and subsequent taxable years on taxable net income as authorized by KRS 141.011 and 141.200(1)(b).

Section 1. Definitions. (1) "Allowable net operating loss carryforward from a previous period" in the case of a nexus consolidated filer means a net operating loss carryforward computed under the guidelines provided in Section 2(3) or (4) of this administrative regulation.

(2) "Corporation" for elective consolidated returns means a corporation as defined in KRS 141.200(2)(d). "Corporation" for separate or nexus consolidated returns for periods beginning on or after January 1, 2005 means a corporation as defined in KRS 141.010(2)(a).

(3) "Corporation income tax nexus" means being subject to the corporation income tax imposed by KRS 141.040(1).

(4) "Current year loss limitation" means the limitation provided by KRS 141.200(11)(b).

(5) "Current year loss limitation adjustment" means the amount
of net operating losses of the includible corporations in a nexus consolidated return, including any allowable net operating loss carryforward from a previous period that exceeds the current year loss limitation.

(9) "Elective consolidated filer" means a corporation as defined in Section 7701 of the Internal Revenue Code, filing in accordance with KRS 141.200(3) and (4).

(10) "Elective consolidated return" means a return defined under KRS 141.200(2)(c).

(11) "Includible corporation" for the nexus consolidated filer means includible corporation as defined in KRS 141.200(9)(d).

(12) "Net operating loss" means net operating loss defined under the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.

(13) "Nexus consolidated filer" means a corporation as defined under KRS 141.010(24), filing in accordance with KRS 141.200(8), (9), (10) and (11).

(14) "Nexus consolidated return" means a return defined under KRS 141.200(9)(f).

Section 2. Computation and Application of Net Operating Loss

(1) "Separate return filers" and "elective consolidated filers" shall compute net operating loss for Kentucky purposes in the following manner:

(a) Apply the apportionment factor provided by KRS 141.120 to the net operating loss.

(b) The apportioned net operating loss is available for carryforward.

(2) "Nexus consolidated filers" shall compute net operating loss for Kentucky purposes in the following manner

(a) Net operating loss computations shall be made before application of the apportionment factor provided by KRS 141.120.

(b) The current year loss limitation adjustment shall be:

1. Added to net income if the total of the net operating losses for the includible corporations that have incurred a net operating loss for the current taxable year and any allowable net operating loss carryforward from a previous period exceeds the current year loss limitation, or

2. Subtracted from net income if the current year loss limitation is greater than the total of the current year losses of includible corporations and any allowable net operating loss carryforward from a previous period.

(c) Any current year loss limitation adjustment that exceeds the current year loss limitation is available as a Kentucky net operating loss carryforward, and is available to be applied against the current year loss limitation for future taxable periods pursuant to KRS 141.200(11)(b).

(3) Separate return loss year rules for a nexus consolidated return. These rules are intended to address the situation where a corporation that previously filed a separate return, and incurred net operating losses as a separate entity, will now be filing as part of a consolidated nexus return, and how those separate net operating losses are to be treated as part of the consolidated return.

(a) Separate entity filers having a net operating loss carryforward for the most recent period that began prior to January 1, 2005, may carry that loss forward to the first return filed under the nexus consolidated rules pursuant to KRS 141.200(1), if:

1. The separate return filer had nexus for Kentucky corporation income tax purposes for the separate return periods that generated the loss; and

2. A supplemental statement, as described in paragraph (c) of this subsection, is attached to the return.

(b) The net operating loss carryforward shall be adjusted to a pre-apportionment amount unless an election has been made to utilize the net operating loss carryforward as an apportioned amount.

(c) A supplemental statement shall be attached to the Kentucky consolidated return that reflects a breakdown of the separate return loss carryforward amounts by entity.

(4) Elective consolidated net loss carryforward to a nexus consolidated return period. These rules are intended to address the situation where an elective consolidated filer who incurred net operating losses as a consolidated group, will now be filing as part of one or more consolidated nexus returns, and how those elective consolidated net operating losses are to be treated for purposes of the consolidated nexus return period.

(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to the first return filed under the nexus consolidated rules pursuant to KRS 141.200(11).

(b) Any net operating loss carryforward from the last return of an elective consolidated group shall be computed under the provisions of Section 1502 of the Internal Revenue Code and related regulations and be adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

(c) The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post apportionment loss to be utilized in computing the current year loss limitation.

(d) If any of the separate corporations that filed as part of the elective consolidated return did not have nexus with Kentucky for the consolidated return periods that generated the net operating loss, then that corporation's share of the net operating loss cannot be carried forward to a nexus consolidated return.

(e) For those situations where the election period as defined in KRS 141.200(3)(c) has expired and the elective consolidated return group is survived by one or more nexus consolidated groups:

1. Compute on a separate entity basis, the pre-apportionment loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return reflecting this computation.

2. The net operating loss carryforward amount shall be on a pre-apportionment basis unless an election is made to carry forward a post apportionment loss to be utilized in computing the current year loss limitation.

3. Determine each net operating loss corporation's share of the net operating loss carryforward in the following manner:

a. Add all separate entity losses together.

b. Divide each separate entity loss amount by the total of the separate entity losses.

c. Multiply the resultant percentage by the consolidated net operating loss carryforward.

4. Carry the loss carryforward amount in subparagraph 3c of this subparagraph to the nexus consolidated return in which the corporation is an includible corporation under the provisions of KRS 141.200(9) through (14).

(5) Elective consolidated net operating loss carryforward to a separate return filer. These rules are intended to address the situation where an elective consolidated filer who has incurred net operating losses as a consolidated group, will now be filing separate entity returns, and how those elective consolidated net operating losses are to be treated for purposes of the separate entity returns.

(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to separate returns filed pursuant to KRS 141.200(2)(c) or KRS 141.200(9)(g). The following rules shall apply to this situation.

1. Compute on a separate entity basis, the post-apportionment Kentucky loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return and the separate corporation returns reflecting this computation.

2. Determine each net operating loss corporation's share of the net operating loss carryforward in the following manner:

a. Add all separate entity losses together.

b. Divide each separate entity loss amount by the total of the separate entity losses.
c. Multiply the resultant percentage by the consolidated net operating loss carryforward.
d. Carry the separate entity loss computed in Section 2(5)(a)(2)(1)-(3) to the first separate return due after the expiration of the elective consolidated return.

(6) Nexus consolidated net operating loss carryforward to a separate return period. These rules are intended to address the situation where a nexus consolidated filer ceases to exist who had incurred net operating losses as a consolidated group, will now be filing separate entity returns, and how those nexus consolidated net operating losses are to be treated for purposes of the separate entity returns.

(a) If a nexus consolidated filer ceases to exist and a consolidated net operating loss carryforward exists, that net operating loss carryforward may be carried forward to the separate returns filed pursuant to KRS 141.200(2)(c) or 141 200(9)(g). The following rules apply to this situation:

1. Compute on a separate entity basis, the post-appointment Kentucky loss for each loss corporation that was included as part of the consolidated net operating loss computed on the last return filed by the nexus consolidated group. The separate entity net operating loss carryforward shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the separate corporation return(s) reflecting this computation.

2. Add all the separate entity computed losses together.

3. Divide each separate loss amount by the total consolidated loss amount.

4. Multiply the resultant percentage by the consolidated net operating loss carryforward.

5. Carry the separate entity net operating loss carryforward computed in subparagraphs 2-4 of this paragraph to the first separate return due after the nexus consolidated group ceases to exist.

(7) Partnerships and limited liability entities that are subject to the corporation income tax imposed by KRS 141.040 that are operated as corporations as defined by KRS 141.010(24) are allowed to take a net operating loss deduction on their corporate income tax return for taxable periods beginning on or after January 1, 2006 for net operating loss carryforwards at the entity level.

Section 3. This administrative regulation shall apply to the computation of the net operating loss deduction of corporations for taxable years beginning on or after January 1, 2005 except where otherwise noted in this administrative regulation.

R.B. Rudolph, Jr. Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 16, 2005 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1555, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes methods of computing a corporation's net operating loss deduction and their application of the deduction to prior and subsequent taxable years on taxable net income as authorized by KRS 141.011 and 141.200(11)(b).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement tax modernization enacted by the 2005 Kentucky General Assembly and comply with KRS 131.130(1), 141.018, and 141 050(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes methods of computing a corporation's net operating loss deduction and their application of the deduction to prior and subsequent taxable years on taxable net income as authorized by KRS 141.011 and 141.200(11)(b).

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

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

(b) The necessity of the amendment to this administrative regulation: 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: Corporations that pay corporation income tax and have NOLs will be affected and the Department of Revenue will be affected to the extent that it administers the corporation income tax.

(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: Kentucky individual income taxpayers, who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 will benefit from being able to correctly compute a credit against the tax due on distributive share income received from a pass-through entity subject to the corporation income tax imposed by KRS 141.040.

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

(a) Initially. 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 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 directs 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 because the requirements of this regulation relating to Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 apply to every applicable taxpayer.

STATEMENT OF EMERGENCY

103 KAR 18:270E

The emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2005. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regula-
ton shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)
103 KAR 16:270E. Apportionment; sales factor.

RELATES TO: KRS 141.120, 141.040(5)(b)1
STATUTORY AUTHORITY: KRS 131.130, 141.018
EFFECTIVE: February 10, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(9) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a weighted sales factor and the denominator of which is four (4), reduced by the number of factors, if any, having no denominator, provided that if the sales factor has no denominator, then the denominator shall be reduced by two (2). This regulation provides guidelines for determining the sales factor of a multistate corporation.

Section 1. Gross Receipts. The following are examples of activities that result in the assignments of gross receipts to Kentucky and are included in the numerator, if the receipts are business income:
1. Activities that produce "gross receipts" as defined under KRS 139.050(1);
2. The sale of real property located in Kentucky;
3. The lease, rental or other use of real property located in Kentucky;
4. The provision of services performed entirely in Kentucky during the tax period;
5. The provision of services performed within and without Kentucky during the tax period based on the ratio which the time spent in performing such services in Kentucky bears to the total time spent in performing such services everywhere;
6. Intangible property received by a business with a commercial domicile in Kentucky;
7. Intangible property, if the intangible has acquired a Kentucky business situs;
8. Franchise fees received from a franchisee located in Kentucky;
9. The distributive share of net income received from a general partnership that is required to file a Kentucky income tax return under the provisions of KRS 141.206.

Section 2. Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property are assigned to Kentucky if the property is in Kentucky or is shipped or delivered to a purchaser in Kentucky.
(2) Sales of goods destined for delivery outside of Kentucky shall not be assigned to Kentucky, irrespective of method of shipment or delivery.
(3) Sales of tangible personal property to the U.S. Government are assigned to Kentucky if the property is shipped from Kentucky.
(4) Receipts from intangibles are assigned to Kentucky if the corporation's commercial domicile is in Kentucky or the intangible has acquired a Kentucky business situs. Examples of receipts from intangibles which are deemed to have acquired a Kentucky business situs are franchise fees from a franchisee located in Kentucky and a corporation's Kentucky distributive share of net income from a general partnership doing business in Kentucky.
(5) Rents or royalties from real or tangible personal property are assigned to Kentucky if the property is located in Kentucky or in the case of mobile property the rent is assigned to Kentucky, if the lessee's base of operations for the property is in Kentucky.
(6) Receipts from the performance of services are assigned to Kentucky if the services are performed entirely in Kentucky, or if the services are performed both within and without Kentucky but a greater portion is performed in Kentucky than in any other state based on cost of performance. If the corporation has income from a general partnership, the distributive share income shall be included in the sales factor. The denominator is the total distributive share; the numerator is the amount of the distributive share apportioned to Kentucky pursuant to KRS 141.206(9).

Section 3. Receipts from intangible property are assigned to Kentucky, regardless of the corporation's or general partnership's commercial domicile, if possession and control of the intangible personal property is localized in connection with a trade or business, creating business situs with Kentucky, so that substantial use or value attaches to the intangible property in Kentucky. In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:
1. The use of the intangible property in the continuous course of the trade or business in Kentucky;
2. The permanency of the location of the intangible property in Kentucky;
3. The independent control and management of the intangible property in Kentucky;
4. The possession and control of the intangible property in Kentucky by an independent local agent for the purpose of transacting a permanent business; and
5. The establishment or use of the intangible property in Kentucky in a manner that attaches substantial use and value of the intangible property to the Kentucky trade or business.

Section 4. This administrative regulation shall apply to tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LHC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6783.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Leslie Saunders
1. Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation further explains the calculation of the sales factor necessary to apportion Kentucky income for multistate corporations.
(b) The necessity of this administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization plan, it explains the how to calculate a necessary factor for income apportionment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.030(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer all tax statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Because of changes to Kentucky corporation income tax calculations, this regulation is necessary to provide guidance for the calculation of the sales factor.
2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. These questions do not apply.
(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
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(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any multistate corporation operating both within and without Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation provides further guidance to corporation income tax payers regarding how to make necessary apportionment calculations.

(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: 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 fee or funding increase will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers who apportion income.

STATEMENT OF EMERGENCY
103 KAR 16:290E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 that passed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:290E. Apportionment; property factor.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.030(1)
EFFECTIVE: February 10, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multistate corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). This regulation provides guidelines for determining the property factor of a multistate corporation.

Section 1. Definitions. (1) "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the corporation for its benefit for the use of the property and includes any amount payable for the use of real or tangible personal property whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise, any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities, janitor services, or incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles. If a payment includes rent and other charges segregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(2) "Annual rental rate" means:
(a) If the property is rented for a twelve (12) month period, the annual rent.
(b) If the property is rented for less than a twelve (12) month period, the net rent paid for the actual period of rental.
(c) If the property is rented for a period of twelve (12) or more months, and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change of accounting period, the net rent paid for the short tax period shall be annualized.

(3) "Net annual rental rate" means the total annual rental paid, less total annual rental received from subtenants.

(4) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

Section 2. General. The property factor includes all real and tangible personal property owned or rented and used during the taxable year, except coin, currency, and pollution control property located in Kentucky for which a tax exemption certificate is issued by the Department of Revenue.

Section 3. Property Used. (1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are included in the factor.

(2) Inventory in process shall be included in the factor. Property or equipment under construction during the taxable year shall be excluded from the factor until it is actually used or is available for or capable of being used during the taxable year.

(3) Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale.

Section 4. Consistency in Reporting. (1) Year-to-year consistency. If filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(2) State-to-state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the valuation of property and in the exclusion of property from or in the inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Section 5. Property Factor: Numerator. (1) Property in transit between a buyer and seller shall be included in the numerator according to the state of destination. Property in transit between locations of the same corporation in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the destination location for purposes of the property factor.

(2) The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without Kentucky during the taxable year shall
be determined, for purposes of the numerator of the factor, on the basis of total time within the state during the taxable year. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 6. Valuation of Owned Property. (1) Property owned by the corporation shall be valued at original cost.

(2) Capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state purposes.

(3) If the original cost of property is not ascertainable, nominal, or zero, the property shall be included in the factor at its fair market value at the date of acquisition by the corporation.

(4) Inventory shall be included in the factor by the valuation method used for federal income tax purposes.

(5) Property acquired by gift or inheritance shall be included in the factor at its basis for depreciation for federal income tax purposes.

Section 7. Rented Property. (1) Property rented by a corporation shall be valued at eight (8) times the net annual rental rate. If this calculation results in a negative value or a clearly inaccurate valuation, any other method which will properly reflect the value may be required by the department or may be requested by the corporation, except, the net annual rental rate shall not be less than the total annual rental rate multiplied by a fraction, the numerator of which is the fair market value of rent applicable to rental property used by the corporation divided by the fair market value of rent applicable to all of the corporation's rental property.

(2) If property is used at no charge or rented for a nominal rate, the property shall be included in the property factor on the basis of the fair market value of rent for comparable property in the area.

(3) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the corporation regardless of whether the corporation is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of a leasehold improvement shall be included in the factor.

Section 8. Monthly Averaging of Property. Averaging by monthly values shall apply if:

(1) Substantial fluctuations in the values of the property exist during the tax period;

(2) Property is acquired after the beginning of the tax period or disposed of before the end of the tax period; or

(3) Substantial fluctuations in the percentage of property used in Kentucky exist during the tax period.

Section 9. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: February 8, 2006
Filed With LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, (502) phone 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) A brief summary of:
(a) What this administrative regulation does: This administrative regulation further explains the calculation of the property factor necessary to apportion Kentucky income for multi-state corporations.
(b) The necessity of this administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization plan. It explains the how to calculate a necessary factor for income apportionment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.030(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer all tax statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Because of changes to Kentucky corporation income tax calculations, this regulation is necessary to provide guidance for the calculation of the property factor.
(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: This is a new administrative regulation. These questions do not apply.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(e) If the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any multistate corporation operating both within and without Kentucky.
(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: This new administrative regulation provides further guidance to corporation income tax payers regarding how to make necessary apportionment calculations.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(1) Initially: None
(2) On a continuing basis: None
(3) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.
(4) 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 fee or funding increase will be necessary.
(5) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(6) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers who apportion income.

STATEMENT OF EMERGENCY
103 KAR 16:300E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 18, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERINIE FLETCHER, Governor
R. B. RUDOLPH, JR., Secretary
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 16:300E. Calculation of taxable net income for disregarded single member LLCs.

RELATES TO: KRS 141.010
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4), 141.018
EFFECTIVE: February 10, 2006
NECESSITY, FUNCTION AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts Ch. 168 relative to the imposition of the tax assessed under this chapter on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. The Kentucky corporation income tax law requires limited liability entities to pay tax on net income because the entity is doing business in Kentucky. This regulation explains how net taxable income should be calculated for single member limited liability companies that are disregarded for federal income tax purposes.

Section 1. Definitions. (1) "Single corporation" means a corporation defined in KRS 141.010(24) or a corporation that is the single member of a single LLC.
(2) "Single member LLC" means a single member limited liability company that is disregarded as an entity separate from its member for federal income tax purposes.

Section 2. In General; Doing Business. For taxable years beginning after December 31, 2004, Kentucky imposes a tax on the net income of certain business entities doing business in Kentucky. In the case of a single member LLC, if the single member LLC is doing business in Kentucky, the single corporation also is deemed to be doing business in Kentucky. Similarly, if the single corporation is doing business in Kentucky, any single member LLC of the single corporation is also deemed to be doing business in Kentucky.

Section 3. Calculation of Net Income. When calculating Kentucky taxable net income, the single corporation and any single member LLCs shall be treated as one corporation in determining taxable income and the applicable apportionment factor.

Section 4. The provisions of this administrative regulation shall apply to taxable years beginning on or after January 1, 2005 except where noted in Section 2.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY. February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
CONTACT PERSON. Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: The Kentucky corporation income tax law requires limited liability entities to pay tax on net income because the entity is doing business in Kentucky. This regulation explains how net taxable income should be calculated for single member limited liability companies that are disregarded for federal income tax purposes.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement tax modernization enacted by the 2005 Kentucky General Assembly and comply with KRS 131.130(1), 141.018, and 141.050(4).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation explains how not taxable income should be calculated for single member limited liability companies that are disregarded for federal income tax purposes.
(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: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer that is a single member LLC or who is the member of a single member LLC will be affected. Revenue will be affected to the extent that it administers corporation income tax.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not impose any new tax or less of the tax. It provides an explanation of how to correctly compute income tax on disregarded entities.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: 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.
(9) TIERING. Is tiering applied? Tiering was not applied because the requirements of this regulation relating to Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 apply to every applicable taxpayer.

STATEMENT OF EMERGENCY
103 KAR 18:070E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 16, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for tax-
able years beginning on or after January 1, 2005. Tax returns im-
pacted by this emergency administrative regulation are due on or
after April 15, 2006. An ordinary administrative regulation is not
sufficient, because it will delay the timely filing of tax returns and
payment of the correct amount of tax due. This emergency admin-
istrative regulation shall be replaced by an ordinary administrative
regulation which is being filed with the Regulations Compiler along
with this emergency administrative regulation. The ordinary ad-
mnistrative regulation is identical to this emergency administrative
regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Emergency Amendment)

103 KAR 18:070E. Supplemental wages and other pay-
ments subject to withholding.

RELATES TO: KRS [444-206]; 141.315
STATUTORY AUTHORITY: KRS 141.050(4), [444-206];
141.315
EFFECTIVE: February 1, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue (Revenue-Cabi-
net) to promulgate administrative regulations and prescribe the
forms and reports necessary to the proper administration of any
and all provisions of KRS Chapter 141. KRS 141.315 requires [and
444-206 requires] the department (cabinet) to promulgate admin-
istrative regulations governing certain specified types of payments.
This administrative regulation prescribes procedure for withholding
income tax on gambling winnings, [net-distributive-share-income
from-a-pass-through-entity,] supplemental wages, and vacation pay.

Section 1. Definitions. (1) "Gambling winnings" means win-
nings that are subject to withholding as defined by 26 U.S.C.
3402(q) of the Internal Revenue Code.

(2) "Lower-tier-pass-through-entity" means a member of a
pass-through entity that is itself a pass-through entity.

(3) "Member" means a shareholder of an S corporation; a part-
ner in a general partnership, a limited partnership, or a limited li-
bility partnership, or a member of a limited liability company in-
cluding a disregarded member.

(4) "Net-distributive-share-income" means the member's pro-
portionate share of the pass-through entity's income, gain,
losses and deductions allocable as an adjustment to gross income in
KRS 141.010(10) and apportioned to Kentucky under KRS 444-206.

(5) "Pass-through-entity" means:
(a) An S corporation;
(b) A partnership; or
(c) A limited partnership, a limited liability partnership or limited
liability company that is not taxed as a corporation for federal tax
purpose.

(6) "Supplemental wages" means payments made to an em-
ployee by the individual's [his] employer in addition to regular wages.

Section 2. Gambling Winnings. Every person making a pay-
ment of gambling winnings shall deduct and withhold from the
payment Kentucky income tax at the maximum tax rate provided in
KRS 141.020.

Section 3. Net-Distributive-Share-Income. (1) For taxable years
ending on or after December 31, 2003, every pass-through entity
required to file an annual return under KRS 141.206(1) shall
withhold income tax at the maximum tax rate provided in KRS
141.020 on the net distributive share income of each nonresident
individual member. A lower-tier-pass-through-entity shall be subject
to the same requirement to withhold and pay income tax on the net
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CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1555 Capitol Annex, Frankfort, KY, 40601, phone 502-564-4240, fax 502-564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 141.315 requires the Department of Revenue to promulgate administrative regulations governing certain specified types of payments. This administrative regulation prescribes procedure for withholding income tax on gambling winnings, supplemental wages, and vacation pay.
(b) The necessity of this administrative regulation: Changes to the tax statutes by the 2005 General Assembly required changes to the corresponding administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.315 requires promulgation of administrative regulations on this topic. These amendments bring the existing administrative regulation into line with amended statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation gives gambling winners and earners of supplemental and vacation pay guidance on when and how to pay tax on those sums while removing forms of income from the administrative regulation to which it no longer applies.
(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: Various forms of income, due to changes by the 2005 GA, are no longer treated in the same way as described in this administrative regulation. This amendment removes these forms of income from the existing administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with changes in the tax law.
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision now applies to only those trying to compute tax on gambling winnings and supplemental and vacation pay.
(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 impact on the above groups is actually unchanged. The change is to remove types of income from the administrative regulation that are no longer affected by it.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Some nominal costs in form changes.
(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: 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 will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? Explain why tiering was or was not used.
   (1) Tiering is applied to the extent that the administrative regulation explains differences in computing the tax depending on when the income is paid.

STATEMENT OF EMERGENCY

103 KAR 18:160E

This emergency administrative regulation is being promulgated in response to the changes to the income tax statutes in KRS Chapter 141 under HB 272 2005 EN signed by the Governor on March 16, 2005. The Finance and Administration Cabinet's Department of Revenue is required by KRS 141.018 and 141.050(4) and permitted by KRS 131.130(1) to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 141. This emergency administrative regulation must be placed into effect immediately to apply to any income tax returns due for taxable years beginning on or after January 1, 2005. Tax returns impacted by this emergency regulation are due on or after April 15, 2006. An ordinary administrative regulation is not sufficient, because it will delay the timely filing of tax returns and payment of the correct amount of tax due. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Emergency Administrative Regulation)

103 KAR 18:160E. Partnership Income, credits, and payments subject to withholding.

RELATES TO: KRS 141.206
STATUTORY AUTHORITY: KRS 141.050(4), 141.206
EFFECTIVE DATE: February 3, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any provisions of KRS Chapter 141. KRS 141.206 requires the department to promulgate administrative regulations governing the filing of tax returns and withholding on certain types of payments. This administrative regulation prescribes procedures for withholding income tax on net distributive share income and filing a composite return by a general partnership.

Section 1. Definitions. (1) "Allowable adjustments" means deductions paid by the general partnership and allowable as an adjustment to gross income by the individual partner under KRS 141.010(10) and apportioned to Kentucky under KRS 141.206;
(2) "Lower-tier partnership" means a general partner that is itself a general partnership.
(3) "Net distributive share income" means the general partner's pro rata share of the total of the general partnership's items of income or loss apportioned to Kentucky under KRS 141.206, minus allowable adjustments. Net distributive share income includes ordinary income, capital gains or losses, rents, dividends, interest, and guaranteed payments.

Section 2. Withholding. (1) For taxable years ending on or after December 31, 2004, every general partnership required to file an annual return under KRS 141.206(3) shall withhold income tax at the maximum tax rate provided in KRS 141.020 on the net distributive share income of each nonresident individual partner.
(2) The general partnership shall be liable to Kentucky for the payment of the tax required to be withheld and shall recover the amount of tax withheld from the nonresident individual partner.
(3) Credits allowed by KRS 141.090(1) and 141.020 (3)(c) that are distributed by a general partnership to the nonresident individual partner may be deducted from the amount to be withheld if the credit is reasonably expected to be claimed in the current tax year. For example, the recycling and composting credit allowed under KRS 141.390 is limited to ten (10) percent of the credit in the
year approved or twenty-five (25) percent of the individual's tax liability, whichever is less. The nonresident individual partner may file a return to claim the remaining credit in future years.

(4) Withholding shall not be required if:
(a) The individual partner's net distributive share income is less than $1,000;
(b) The general partnership demonstrates that the individual partner's net distributive share income is not subject to Kentucky income tax;
(c) The general partnership is a publicly-traded partnership as defined by 26 U.S.C. Section 7704(b) of the Internal Revenue Code that is treated as a partnership for the purposes of the Internal Revenue Code; or
(d) The individual partner elects to be included in a composite return filed by the general partnership under Section 3.

(5) If withholding is required, the general partnership on or before the 15th day of the fourth month after the end of its taxable year shall:
(a) File with the Kentucky Revenue Cabinet, Revenue Form 40A201, "740NP-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report" reporting the number of nonresident individual partners, the total net distributive share income subject to withholding, total allowable credits, and the total amount of Kentucky income tax withheld;
(b) Provide each nonresident individual partner with Revenue Form 40A200, "PTE-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income* or an approved substitute form documenting the partner's net distributive share income subject to withholding, allowable credit and the amount of Kentucky income tax withheld; and
(c) Remit the tax withheld.

(6) A lower-tier general partnership shall be subject to these same requirements to withhold and pay income tax on the net distributive share income of each of its nonresident individual partners.

Section 3. Composite Return. (1) A nonresident individual partner of a general partnership may elect to be included in the composite income tax return by submitting a written statement to the partnership thirty (30) days before the time prescribed for filing the partnership's return.

(2) A general partnership may file a composite income tax return on behalf of electing nonresident individual partners. The partnership shall for each nonresident partner electing to be included in the composite return:
(a) Compute the amount of tax due by multiplying the partner's net distributive share income by the highest marginal rate provided in KRS 141.020;
(b) File with the Department of Revenue, Form 740NP, Kentucky Nonresident Tax Return, on or before the 15th day of the fourth month after the end of its taxable year;
(c) Attach a schedule reporting the name, address, social security number, net distributive share income, allowable credits, and the tax paid on behalf of each electing nonresident individual partner;
(d) Provide each nonresident individual partner a statement showing the amount of income reported on Form 740-NP and the amount of tax paid by the partnership on behalf of the individual partner, and
(e) Remit the tax with the return.

(3) General Partnerships filing composite returns shall make estimated tax payments if required under the provisions of KRS 141.500.

Section 4. The reporting of net distributive share income on Form PTE-WH or a composite return and payment of tax due by the partnership shall satisfy the filing requirements of KRS 141.206 for a nonresident individual partner whose only Kentucky source income is net distributive share income. A nonresident individual partner may file an individual return to take advantage of the graduated tax rates and apply the tax paid on his or her behalf against tax imposed for the taxable year in which the income is reported.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(b) Revenue Form 40A201, "740NP-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report," September 2005; and
(c) Revenue Form 42AT40-NP, "740-NP, Kentucky Income Tax Return Nonresident or Part-Year resident," September 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 5 p.m.

R.B. RUDOLPH JR., Secretary
APPROVED BY AGENCY: January 27, 2005
FILED WITH LRC: February 3, 2006 at noon
CONTACT PERSON. Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1956 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation explains and prescribes procedures for withholding income tax on net distributive share income and filing a composite return by a general partnership.

(b) The necessity of this administrative regulation: KRS 131.130(1), 141.018 and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation is necessary to describe procedures for filing of returns by partnerships in order to comply with KRS 141.206.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.206 requires the Department of Revenue to promulgate administrative regulations for general partnerships governing the filing of returns and withholding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation explains when and how to withhold on nonresident individual general partners and the procedures necessary for filing a composite income tax return on behalf of electing nonresident individual general partners.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist 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: General partnerships with nonresident individual partners are affected by this regulation. Also, tax preparers filing general partnership returns which have nonresident individual general partners will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if now, or by the change if it is an amendment: The administrative regulation will provide information to tax preparers, general partners, and general partnerships of the requirement of withholding of Kentucky income tax on nonresident individual general partners distributive income and the procedure to file a composite return if elected by a nonresident individual general partner.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: Funds provided by the Department of Revenue.
(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 tieron applied? Tieron was not applied because the requirements of this regulation apply only to nonresident individual general partners of a general partnership, a basically homogenous group without any definable tiers.

STATEMENT OF EMERGENCY
201 KAR 11:011E

This emergency administrative regulation is one that must be placed into effect immediately in order to meet an imminent threat to the public, health, safety, or welfare: by remedying the loss of competition alleged in the Complaint filed in United States of America vs. Kentucky Real Estate Commission, United States District Court for the Western District of Kentucky Civil Action No. 3:05-cv-00188-JGH, by eliminating the contrary language in Section 1(2) and (3) of the existing regulation, to safeguard the interests of the public against the harm that can result from a real estate agent's reliance upon these contrary provisions as mandated by a federal court order that was entered in November, 2005. The reasons why an ordinary administrative regulation is not sufficient: An ordinary administrative regulation is not sufficient because it will violate the federal mandate referred to in paragraph (1), above, including the terms of a Consent Decree that the federal court approved thereon, and because it will not timely address the confusion created by the contrary language in 201 KAR 11:121, Section 1(2) and (3), which must be dealt with immediately. In addition, promulgating an emergency administrative regulation requiring rebates and inducements to be in writing will avoid confusion, protect the public and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since without the emergency regulation there would be a gap in enforcement during which time rebates and inducements could be offered verbally. This emergency administrative regulation is identical to the ordinary 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 February 6, 2006.

ERNIE FLETCHER, Governor
RON SMITH, Chairperson

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Emergency Amendment)

201 KAR 11:011E. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1), 324.046(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(h), (m), (l), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282

EFFECTIVE: February 6, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to effectively carry out and enforce the provisions of [implement] KRS Chapter 324. This administrative regulation defines terms for 201 KAR Chapter 11 that are used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:
(a) One (1) college semester hour; or
(b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.
(2) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:
(a) The offer or counteroffer is accepted; and
(b) An exécutory contract exists.
(3) "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:
(a) Is contrary to fact; and
(b) Leads to mistaken belief or occurrence; or
(c) Is knowingly made to include a representation that is contrary to fact.
(4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:
(a) Is;
1. Known to be false; or
2. Made recklessly;
(b) Is made to induce an act;
(c) Causes injury.
(5) "Guaranteed sales plan" means an offer or solicitation:
(a) To guarantee the sale of an owner's real estate; or
(b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.
(6) "Inducement" means money, a free gift, a prize, or any other thing of value that a licensee would offer a potential client or customer ("Paid" means an item of value that:
(a) Is offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser; and
(b) Is not a complimentary;
1. Refreshment, including a soft drink or snack, that is offered to the general public; or
2. Gift that:
a. Has a value less than $100;
b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and
c. Was not offered prior to closing.
(7) "Rebate" means a payment of money or anything of value by, or on behalf of, a licensee to a client or customer, or to a third party authorized by the client or customer to receive the payment that is in connection with the provision of real estate brokerage services. Examples of rebates are: contributions to third parties; Include payments to charities, home inspectors, and moving services. A rebate shall not include compensation paid for real estate brokerage services to any third party who is not licensed in Kentucky to perform such services; a rebate shall not authorize a client or customer to allow or direct such payments to an unlicensed third party for performing such services.
(8) [7] (9) "Required disclosure" means:
(a) In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement;
(b) In radio advertising, that the disclosure shall be verbal and clearly understandable; and
(c) In television advertising, that the disclosure shall:
1. Be verbal and clearly understandable; or
2. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering, and in letters:
   a. Which are eighteen (18) video scan lines in size for letters which are all upper case; or
   b. Which are twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.
(9) [8] (10) "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale
or lease of real property.

RON SMITH, Chairperson
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 6, 2006 at 4 p.m.
CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation outlines the definitions for several statutory requirements.
(b) The necessity of this administrative regulation: Definitional sections are required to clarify certain key statutory terms.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation defines certain terms found in KRS Chapter 324.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions provide clarification for licensees and consumers to understand certain statutory terms.
(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 eliminates the definition of "prize" as that issue will be handled by the amendments to 201 KAR 11:121 and adds the definitions of "inducement" and "rebate".
(b) The necessity of the amendment to this administrative regulation: In amending 201 KAR 11:121, it is necessary to delete the definition of "prize" and add the definitions of "inducement" and "rebate".
(c) How the amendment conforms to the content of the authorizing statutes: The amendments to 201 KAR 11:121 will specifically allow licensees to offer rebates and inducements to their clients or customers when licensees disclose to them, in writing, the terms of the rebates or inducements. This amendment defines "inducement" and "rebate" as those terms are used in 201 KAR 11:121.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will simply remove a definition and add two additional ones due to a clarification and codification in another proposed amendment. This definitional change will eliminate any confusion and discrepancies between the two regulations.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is simply a definitional amendment.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment is simply eliminating the definition of a term and adding two additional ones.
(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 will be 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 funding will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.
(9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

STATISTICAL OF EMERGENCY
201 KAR 11:121E

This emergency administrative regulation is one that must be placed into effect immediately in order to meet an imminent threat to the public, health, safety, or welfare by remedying the loss of competition alleged in the Complaint filed in United States of America vs. Kentucky Real Estate Commission, United States District Court for the Western District of Kentucky Civil Action No. 3:05-cv-00188-JGH, and by eliminating the contradictory language in Section (2) and (3) of the existing administrative regulation, to safeguard the interest of the public against the harm that can result from a real estate agent's reliance upon these contradictory provisions, as mandated by a federal court order that was entered in November, 2005. An ordinary administrative regulation is not sufficient, because it will violate the federal mandate referred to above, including the terms of a consent decree that the federal court approved therein, and because it will not timely address the confusion created by the contradictory language that must be immediately dealt with. In addition, promulgating an emergency administrative regulation requiring rebates and inducements to be in writing will avoid confusion, protect the public, and prevent unfair regulation of the industry by the Kentucky Real Estate Commission, since without the emergency administrative regulation there would be a gap in enforcement during which time rebates and inducements could be offered verbally. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be repealed by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on February 6, 2006.

ERNIE FLETCHER, Governor
RON SMITH, Chairperson

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Emergency Amendment)

201 KAR 11:121E. Improper conduct.

RELATES TO: KRS 324.010(3), 324.160(4)(f), (i), (m), (o), (v), (w)(w), (w), (2), (7), 24 C.F.R. 3500
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
EFFECTIVE: February 6, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes requirements and standards for behavior considered improper conduct.

Section 1. The following shall be improper for any licensed agent:
(1) To accept or agree to accept, without written disclosure to the seller and buyer, or lessor and [row] lessee, on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.
(2) (a) To fail to disclose in writing to the licensee's clients or customers the terms of any rebate or inducement:
(b) To offer, induce, or otherwise grant, directly or indirectly, to any person, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(c) (2) It shall not be improper conduct to subsidize money, or to induce, or otherwise offer or provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(d) It shall not be improper conduct to:
(a) Offer, induce, or otherwise provide, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(b) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(c) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(d) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(e) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(f) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(g) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(h) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(i) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
(j) To offer, induce, or otherwise provide, directly or indirectly, to the general public, any prize, money, free gift, rebate, or other thing of value, as an inducement, other than the situations listed in paragraph (b) of this subsection.
1. Taking information from the borrower and filling out the application;
2. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford;
3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product;
4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process;
5. Initiating/ordering verifications of employment and verifications of deposit;
6. Initiating/ordering requests for mortgage and other loan verifications;
7. Issuance/ordering appraisals;
8. Initiating/ordering inspections or engineering reports;
9. Providing disclosures (truth in lending, good faith estimate, others) to the borrower;
10. Assisting the borrower in understanding and clearing credit problems;
11. Maintaining regular contact with the borrower, realtors, lender, between application and closing to appraise them of the status of the application and gather any additional information as needed;
12. Ordering legal documents;
13. Determining whether the property was located in a flood zone or ordering such service; and
14. Participating in the loan closing;
(d) Requests or receives compensation that is not commensurate with the actual work performed; or
(e) Requests or receives compensation for work that is not actually performed by him or her;
(f) A broker-licensed in Kentucky] to aid, abet, or otherwise assist any individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license.

Section 2. The following shall not be considered improper conduct:
(1) To disseminate information about the fee or other compensation the licensed agent agrees to charge for his or her services; and
(2) To disseminate information about inducements and rebates offered by the licensed agent or his or her clients or customers.

RON SMITH, Chairperson
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 6, 2008 at 4 p.m.
CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation outlines what actions constitute "improper conduct" under the license laws.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to further outline what activities would fall under KRS 324.160(4)(v), the statute that prohibits improper conduct by licensees.
(c) How this administrative regulation conforms to the content of
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the authorizing statutes: This administrative regulation outlines certain activities that are prohibited under KRS 324.160(4)(v).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation makes it clear to licensees and the public about what activities a licensee may and may not perform in order to comply with the mandate of KRS 324.160(4)(v).

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow licensees to offer rebates and inducements to their clients or customers when licensees disclose to them, in writing, the terms of the rebates or inducements.

(b) The necessity for the amendment to this administrative regulation: This amendment allows rebates and inducements if they are in writing.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies what will be allowed under the enabling statutes, with the required written disclosure.

(d) How the amendment will assist in the effective administration of the statutes: Promulgating an administrative regulation allowing rebates and inducements and requiring them to be in writing will avoid confusion, protect the public, and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since without the regulation there would be a gap in enforcement during which time rebates and inducements could be offered verbally.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees will be subject to this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment. This amendment will allow rebates and inducements that licensees disclose to their clients and customers.

(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 will be 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 fees will be needed.

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

(9) TIERING: Is tiering applied? Tiering was not used, because this regulation should not disproportionately affect any particular group of people.

STATEMENT OF EMERGENCY
502 KAR 32:010E

This emergency administrative regulation is being promulgated in accordance with the statutory requirements of KRS 17.170 - 17.175 which direct the Department of State Police to adopt administrative regulations concerning the collection of DNA samples from certain designated convicted felons, both adult and juvenile, as well as certain designated adjudicated juvenile public offenders, for DNA identification purposes. Further, KRS 17.175 directs the Department of State Police to adopt administrative regulations concerning the collection of DNA samples from missing persons, close relatives of missing persons, unidentified bodies, and crime scene specimens which are entered into the department's DNA database, along with samples collected from certain designated offenders. Finally, KRS 17.175 requires the Department of State Police to adopt administrative regulations concerning the security and usage of the DNA identification database. The Department of State Police DNA database serves an important public safety and law enforcement purpose in providing a means to solve unsolved crimes by allowing for comparison of crime scene DNA specimens with other DNA samples contained in the department's database, as well as with samples contained in the Federal Bureau of Investigation's national database. It is deemed necessary to enact this administrative regulation by emergency order to circumvent any challenges to the ongoing collection of DNA samples for inclusion in the department's database promised on noncompliance with KRS Chapter 13A. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on January 13, 2006. The ordinary administrative regulation and emergency administrative regulation are identical.

ERNIE FLETCHER, Governor
STEPHEN B. PENCE, Secretary

JUSTICE AND PUBLIC SAFETY
Department of State Police
Forensic Laboratory System

(NEW EMERGENCY ADMINISTRATIVE REGULATION)

502 KAR 32:010E. Centralized database for DNA identification records.

RELATES TO: KRS 17.170, 17.171, 17.172, 17.173, 17.174, 17.175

STATUTORY AUTHORITY: KRS 15A.160, 17.170, 17.175, 17.000

EFFECTIVE: January 23, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.175 directs the Kentucky State Police to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, to include provisions for collection of DNA samples from designated persons for inclusion in the database as well as procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, as well as procedures governing DNA database system usage, security, and integrity issues.

Section 1. Definitions. (1) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted. This may include, but is not limited to, blood, hair, saliva, tissue, or bone.

(2) "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

(3) "DOJ" means the Department of Juvenile Justice.

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA database" means the database maintained by the Kentucky State Police which contains the DNA profiles of qualifying offenders, crime scene specimens, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

(6) "DNA profile" means a set of DNA identification characteristics which permit the DNA of one (1) person to be distinguishable from that of another person.

(7) "DNA sample" means a biological sample collected for DNA identification purposes.

(8) "DOC" means the Department of Corrections.

(9) "Evidentiary item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

(10) "FBI" means the Federal Bureau of Investigation.

(11) "KSP" means the Kentucky State Police.

(12) "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

(13) "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a blood sample from a qualifying offender by either hypodermic needle extraction or finger prick lancet for the purpose of obtaining a DNA profile.

(14) "Qualifying offender" means a person who has committed one (1) or more of the criminal or public offenses enumerated in...
Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) DNA samples shall be collected by DOC and DJJ from qualifying offenders in a medically-approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist.

(2) KSP Central Lab shall provide offender DNA collection kits to DOC and DJJ for the collection of DNA samples. Each offender DNA collection kit shall either contain a vacutainer tube containing EDTA preservative for obtaining a drawn blood sample by hypodermic needle extraction, or the collection materials necessary to obtain a blood sample by a finger prick lancet procedure. Each offender DNA collection kit shall be secured in protective wrapping materials in a predressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a blood tube sample shall contain an "Offender DNA Collection Kit Information Sheet (blood tube method)", KSP Form No. 47 (Revised 5/03). Each offender DNA collection kit for the collection of a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A (First Edition 01/06). The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed with biographical and offense-related information concerning the offender, and shall have space for the qualifying offender's left and right fingerprints. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the blood sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender.

(4) Immediately following collection of a blood sample from a qualifying offender, the offender DNA collection kit shall be sealed. As soon as practical following collection, the offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples For Inclusion In DNA Database. (1) Any available biological material from the missing person from which a DNA sample can be extracted shall be submitted to a law enforcement agency to the KSP Central Lab accompanied by a completed KSP Request For Examination, KSP Form No. 26 (Revised 3/01).

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a blood sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples from Unidentified Bodies For Inclusion in DNA Database. (1) A biological sample from the unidentified body shall be submitted by a law enforcement agency to the laboratory accompanied by a completed KSP Form No. 26.

(2) If practical, the biological sample may be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable if one (1) of the above enumerated samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection Of DNA Samples From Crime Scenes For Inclusion In DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to the KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

(2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.


Section 7. DNA Database Usage, Access, and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database security, employee access, and limitations on DNA database usage shall be governed by the KSP Forensic Laboratories' "DNA Database Manual" (Revised January 9, 2006).

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Offender DNA Collection Kit Information Sheet (blood tube method)", KSP Form No. 47 (Revised 5/03);
(b) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)", KSP Form No. 47-A (First Edition 1/06);
(c) "KSP Request For Examination," KSP Form No. 26 (Revised 3/01);
(d) KSP Forensic Laboratories' "The Forensic Biology/DNA Database Quality Assurance Manual," (Revised January 13, 2006);
(e) KSP Forensic Laboratories' Operations Manual, Section 9-9 "Proficiency Testing Program," (Revised July 1, 2003);
(f) KSP Forensic Laboratories' Operations Manual, Section 9-12 "Proficiency testing- Confidentiality," (Revised July 1, 2003); and
(g) KSP Forensic Laboratories' "DNA Database Manual" (Revised January 9, 2006).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Forensic Central Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN B. PENCE, Lt Governor, Secretary MARK MILLER, Commissioner APPROVED BY AGENCY: January 13, 2006 FILED WITH LRC: January 23, 2006 at 10 a.m.
CONTACT PERSON: Roger Wright, Assistant General Counsel, Justice And Public Safety Cabinet, Office of Legal Services, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6345, fax (502) 673-1636.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Roger G. Wright
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes the collection procedures to be used by the Department of Corrections and the Department of Juvenile Justice for blood samples from certain convicted adult and juvenile offenders as well as adjudicated juvenile public offenders whose DNA profiles are required by KRS 17.170 - 17.174 to be included in the Department of State Police's DNA database. This regulation also establishes procedures for the collection and submission of biological samples from missing persons, close relatives of missing persons, unidentified persons, and crime scene evidence for inclusion in the DNA database. This regulation further establishes quality assurance and DNA analyst proficiency standards for DNA profiles included in the DNA database. Finally, this regulation estab-
lishes DNA database access restrictions and security protocol.

(b) The necessity of this administrative regulation: KRS 17.170 requires the Department of State Police to promulgate administrative regulations concerning the collection of blood samples from offenders whose DNA samples are to be included in the department's DNA database. KRS 17.175 requires the department to promulgate administrative regulations for the collection of DNA samples from qualifying offenders, missing persons, close relatives of missing persons, unidentified persons, and evidence recovered from crime scenes for inclusion in the department's DNA database. KRS 17.175 requires the department to establish administrative regulations concerning the usage and security of the department's DNA database.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes blood sample collection procedures for qualifying offenders for inclusion of offenders' DNA profiles in the department's DNA database. This regulation also establishes protocol for submission of biological samples from unidentified persons, missing persons, close relatives of missing persons, and crime scene evidence for inclusion of these DNA profiles in the department's DNA database. Finally, this regulation addresses system usage and access issues as directed by KRS 17.175.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes blood sample collection procedures for qualifying offenders, for inclusion of their DNA profiles in the department's DNA database. This regulation also establishes protocol for submission of biological samples from unidentified persons, missing persons, close relatives of missing persons, and crime scene evidence for inclusion of these DNA profiles in the department's DNA database. Finally, this regulation addresses system usage and access issues as directed by KRS 17.175.

(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 regulation affects convicted adult and juvenile offenders and juvenile public offenders who are required by statute to submit biological samples for inclusion of their DNA profiles in the department's DNA database. This regulation also affects the Department of Corrections and the Department of Juvenile Justice as these agencies are tasked by statute with collection of qualifying offender samples for DNA identification purposes.

(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: Qualifying offenders are required to submit to collection of a blood sample for DNA identification purposes. The Department of Corrections and Department of Juvenile Justice will be required to have appropriate medical staff available to complete the required collection. Other law enforcement agencies will have to comply with the department's submission procedures for other enumerated categories of DNA profiles that are included in the department's DNA database.

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

(a) Initially: The cost of testing a sample to develop a DNA profile for inclusion in the department's DNA database is approximately $28 per sample. Based upon past year qualifying offender submissions for inclusion in the DNA database, the department estimates that an average of 1,200 qualifying offender samples will be submitted annually for testing and inclusion in the DNA database. To date, the department has been able to receive federal grant funding from the National Institute of Justice to cover qualifying offender sample testing. Testing related to missing persons, unidentified bodies, and crime scenes are covered by the department's existing budget.

(b) On a continuing basis: Same as initial costs. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Same as initial costs. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Discussed in initial cost assessment above.

(c) Tiering:Tiering is only applicable to this regulation in the sense that the collection and submission procedures for biological samples from qualifying offenders is not the same as for missing persons, unidentified persons, and crime scene evidence. It is not always possible to obtain a pristine blood sample in missing persons, unidentified persons, and crime scene evidence submission cases for DNA database inclusion as it is for qualifying offenders. Further, while this regulation establishes satisfactory chain of custody protocol for qualifying offender samples, the regulation does not set a restriction on the type of offender. Identifying information in the presence of person collecting blood sample, sealing blood sample immediately on collection with tamper proof tape, and forwarding as soon as practical to the KSP Central Lab), the department does not deem it necessary to effect strict evidentiary chain of custody protocol restrictions on qualifying offender sample submissions as with missing persons, unidentified bodies, and crime scene evidence samples. The department's rationale for this distinction is that any match of a qualifying offender's DNA profile to an unsolved crime profile in the department's or the national DNA database can be confirmed by retesting the offender's blood sample against the original crime scene evidence in a particular case. Further, strict evidentiary protocol dictates that a new sample of the offender's blood would be obtained by consent or search as necessary to confirm a match. In this regard, the department does not consider qualifying offender samples evidentiary in the strict chain of custody sense as is the case with other DNA profile submissions placed in the DNA database which would more likely be used as evidence in court proceedings. Simply put, the department believes placing any stricter collection protocol requirements on the Department of Corrections and Department of Juvenile Justice are not justified under a common sense cost benefit analysis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 49 U.S.C. 14132 provides that the FBI will only accept DNA identification records and DNA analyses for inclusion in the FBI's national DNA database from a criminal justice agency which maintains a quality assurance program that meets or exceeds the standards issued by the direction of the FBI.


3. Minimum or uniform standards contained in the federal mandate: See above.

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: N/A
This emergency administrative regulation is being promulgated to give timely effect to the provisions of Governor Fletcher's Executive Order of December 29, 2005 (EO 2005-1376) regarding certificate of need by updating the 2005 update to the 2004-2006 State Health Plan. Failure to enact this administrative regulation on an emergency basis would be in conflict with KRS 216B.015(27), which mandates that the State Health Plan be updated on an annual basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation differs from the emergency administrative regulation filed on December 29, 2005 by including revisions to the following:

The introductory page was changed to reflect the change in dates within the title from the 2004-2006 State Health Plan to the 2005 Update to the 2004-2006 State Health Plan.

Page iv, under the subheading of "Technical Notes", the Office of Certificate of Need was changed to the Division of Certificate of Need and the Certificate of Need website address was changed from http://chs.ky.gov/con to http://chs.ky.gov/ohp/con.

Page iv, under the subheading of "Technical Notes", Sections 10 and 11 were added to cite the source of population projections to be used in the plan and clarify the review of hybrid diagnostic equipment.

Pages 1-4, the heading, definition and review criteria for acute care hospital was added.

Pages 5-6, under the subheading "Hospital Acute Care Beds", were modified to provide hospitals with increased flexibility to add new acute care hospital beds.

Pages 7-8, under the subheading "Comprehensive Physical Rehabilitation Hospital Beds", were modified to expand the availability of hospital based rehabilitation beds.

Pages 9-10, under the subheading "Special Care Neonatal Beds", were modified to allow the potential number of neonatal beds to increase.

Pages 15-18, under the subheading "Psychiatric Hospital Beds", were modified to allow for the increased expansion and redistribution of psychiatric hospital beds.

Pages 19-20, under the subheading "Psychiatric Residential Treatment Facilities", were modified to reflect the establishment of the state mental hospital districts.

Page 22, under the subheading "Home Health Services" was modified to reflect the reduction in home health visits per patient.

Page 25, the heading, definition and review criteria for residential hospice facility was added.

Page 27, under the subheading "Intermediate Care Facilities for the Mentally Retarded and Developmentally Disabled", was modified to allow the transfer of existing IC-FMR/DD beds between facilities.

Pages 32-34, under the subheading "Magnetic Resonance Imaging Equipment", were modified to allow additional opportunities for applicants to demonstrate consistency with the State Health Plan when applying for a MRI.

Page 35, under the subheading "Megavoltage Radiation Equipment", was modified to allow the establishment of additional megavoltage radiation therapy programs based upon population.

Pages 36-37, under the subheading "Positron Emission Tomography Equipment" were modified to allow the establishment of additional PET programs based upon population.

Page 43, the heading, definition and review criteria for prescheduled pediatric extended care was added.

Page 44, the heading, definition and review criteria for primary care centers with out-patient diagnostic and surgical services was added.

ERNEST FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(Mandatory Amendment)

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

RELATES TO: KRS 216B.010-216B.130
STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1),
216B.010, 216B.015(27), 216B.040(2) (a)(2) [KRS 216B.040(2) (a)(2) requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2006 Update to the 2004-2006 State Health Plan as amended January 31, 2006 shall be used to (1) Review a certificate of need application pursuant to KRS 216B.040; and (2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(20)(a) and 216B.061(1)(d)


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division (Office) of Certificate of Need, 275 East Main Street, third floor [HSIE-6], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Deputy Secretary
SHAWN CROUCH, Executive Director
APPROVED BY AGENCY: January 30, 2006
FILED WITH LIC: January 31, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Shane O'Donley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.
(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2005 update to the 2004-2006 State Health Plan by reference.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation and preparation of the State Health Plan is required by KRS 216B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation and preparation of the State Health Plan is required by KRS 216B.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will update the 2004-2006 State Health Plan for 2005
(b) The necessity of the amendment to this administrative regulation: KRS 216B 015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was
prepared in 2004, so the annual update is being prepared for 2005.
(c) How the amendment conforms to the content of the
authorizing statutes: The amendment carries out the requirement of KRS 2168.015(27) that the State Health Plan be updated on an
annual basis.
(d) How the amendment will assist in the effective administra-
tion of the statute: This amendment will provide an updated State
Health Plan for purposes of certificate of need review.
(3) List the type and number of individuals, businesses, organi-
zations, or state and local governments affected by this adminis-
trative regulation: This administrative regulation will affect health
care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate
of Need Program, and local communities that plan for, use, or de-
velop community health care facilities.
(4) Provide an assessment of how the above group or groups
will be impacted by either the implementation of this administrative
regulation, if new, or by the change if it is an amendment: The
above groups will be impacted by the changes in the 2005 update
to the 2004-2006 State Health Plan which removes the review
criteria for Rehabilitation Agencies and includes review criteria for
primary care centers with outpatient diagnostic and surgical serv-
ces.
(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the imple-
mentation 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 regula-
tion, if new, or by the change if it is an amendment: There are no
increases in fees or funding necessary with this amendment.
(8) Provide a statement as to whether or not this administrative
regulation establishes any fees or directly or indirectly increases
any fees. This administrative regulation does not establish any fees
or directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? Tiering was not appropriate in
this administrative regulation, because the administrative regula-
tion applies equally to all those individuals or entities regulated by
it. Disparate treatment of any person or entity subject to this ad-
minitrative 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 Consti-
tution.

STATEMENT OF EMERGENCY
900 KAR 6:020E

This emergency administrative regulation is being promulgated
to give timely effect to the provisions of Governor Fletcher’s Ex-
ecutive Order of December 29, 2005 (EO 2005-1376) regarding
certificate of need by revising the certificate of need application fee
schedule. Failure to enact this administrative regulation on an
emergency basis would be in conflict with KRS 2168.040(3)(c),
which authorizes the Cabinet for Health and Family Services to
establish by administrative regulation reasonable application fees
for certificate of need. This emergency administrative regulation
shall be replaced by an ordinary administrative regulation. The
ordinary administrative regulation is identical to this emergency
administrative regulation.

ERNIE FLETCHER, Governor MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy Division of Certificate of Need
(Emergency Amendment)

900 KAR 6:020E. Certificate of need application fee schedule.

RELATES TO: KRS 2168.040(3)(c)
STATUTORY AUTHORITY: KRS 2168.040(3)(c)
EFFECTIVE: January 31, 2006
NECESSITY, FUNCTION, AND CONFORMITY: KRS
2168.040(3)(c) authorizes the Cabinet for Health and Family Ser-
vices to establish, by administrative regulation, reasonable applica-
tion fees for certificates of need. This administrative regulation
establishes the fee schedule for certificate of need applications.

Section 1. (1) Certificate of need applications not proposing a
capital expenditure or proposing a capital expenditure of up to
$200,000 ($500,000) shall be assessed an application fee of $1,000
($2,500).
(2) Certificate of need applications which propose a capital
expenditure greater than $200,000 up to $500,000 ($500,000 up
to $100,000) shall be assessed an application fee of five-tenths (.5)
percent of the capital expenditure and shall be computed to the
nearest dollar ($500).
(3) Certificate of need applications which propose a capital
expenditure greater than $500,000 up to $1,000,000 shall be assessed
an application fee of $2,500 ($1,000).

[4] Certificate of need applications which propose a capital
expenditure greater than $500,000 up to $1,000,000 shall be as-
sessed an application fee of $2,000.
(5) Certificate of need applications which propose a capital
expenditure greater than $1,000,000 up to $5,000,000 shall be as-
sessed an application fee of $6,000.
(6) Certificate of need applications which propose a capital
expenditure greater than $5,000,000 up to $10,000,000 shall be as-
sessed an application fee of $11,000.
(7) Certificate of need applications which propose a capital-
expenditure greater than $10,000,000 shall be assessed an applica-
tion fee of $11,000 plus an additional fee of 0.5 percent of the capital
expenditure and shall be computed to the nearest dollar.

Section 2. Application fees shall be submitted with the applica-
tion. Applications shall not be deemed complete until the applica-
tion fee has been paid. Application fees shall be refunded only if
notice of withdrawal of the application is received by the cabinet
within five (5) working days of the date the application is received
by the Cabinet for Health and Family Services.

SHAWN CROUCH, Executive Director
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: January 30, 2006
FILED WITH LRC: January 31, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordi-
nator, Cabinet for Health Services, Office of the Counsel, 275 East
Main Street - 6W-B, Frankfort, Kentucky 40621, phone (502) 564-
7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Shane O’Donley 502-564-9589, ext. 3274
(1) Provide a brief summary of:
(a) What this administrative regulation does: This adminis-
trative regulation establishes the fee schedule for certificate of need
applications.
(b) The necessity of this administrative regulation: In order to
provide monies necessary to fund the Division of Certificate of
Need.
(c) How this administrative regulation conforms to the content
of the authorizing statutes: This administrative regulation conforms
with KRS 2168.040(3)(c) which authorizes the cabinet to set rea-
sonable certificate of need application fees.
(d) How this administrative regulation currently assists or will
VOLUME 32, NUMBER 9 - MARCH 1, 2006

assist in the effective administration of the statutes: KRS 216B.040(3)(c) authorizes the Cabinet for Health and Family Services to establish, by administrative regulation reasonable application fees for certificates of need. This administrative regulation establishes the fee schedule for certificate of need applications.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will modify the current certificate of need application fees to make them more comparable to our neighboring certificate of need states.
(b) The necessity of the amendment to this administrative regulation: To provide monies to fund the Division of Certificate of Need.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.040(3)(c) which authorizes the Cabinet to set reasonable certificate of need application fees.
(d) How the amendment will assist in the effective administration of the statutes: It will allow the Division of Certificate of Need to continue to administer the Certificate of Need Program.
(e) List the type and number of individuals, businesses, organizations, or states and local governments affected by this administrative regulation: All persons applying for a certificate of need.
(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. Persons applying for a certificate of need will pay an application fee based upon a fee schedule rather than a fee schedule. This may result in higher application fees for some and lower application fees for others. Since the proposed regulation replaces the fee schedule with a more commonly applied fee rate, it is difficult to quantify an overall percentage change. However, the following table illustrates the expected differences in the current and proposed CON application fee based upon identical capital expenditure estimates:

<table>
<thead>
<tr>
<th>Estimated Capital Expenditure</th>
<th>Application Fee Under Current Fee Structure</th>
<th>Application Fee Under Proposed Fee Structure</th>
<th>Percentage Change in Application Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50,000</td>
<td>$250</td>
<td>$750</td>
<td>400% increase</td>
</tr>
<tr>
<td>$100,000</td>
<td>$500</td>
<td>$500</td>
<td>200% increase</td>
</tr>
<tr>
<td>$200,000</td>
<td>$1,000</td>
<td>$1,000</td>
<td>No Change</td>
</tr>
<tr>
<td>$500,000</td>
<td>$1,000</td>
<td>$2,500</td>
<td>250% increase</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>$5,000</td>
<td>$5,000</td>
<td>250% increase</td>
</tr>
<tr>
<td>$5,000,000</td>
<td>$11,000</td>
<td>$19,000</td>
<td>417% increase</td>
</tr>
<tr>
<td>$10,000,000</td>
<td>$36,000</td>
<td>$14,000</td>
<td>227% increase</td>
</tr>
<tr>
<td>$50,000,000</td>
<td>$61,000</td>
<td>$11,000</td>
<td>144% Reduction</td>
</tr>
<tr>
<td>$100,000,000</td>
<td>$211,000</td>
<td>$169,000</td>
<td>844% Reduction</td>
</tr>
</tbody>
</table>

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certificate of Need application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation may increase the amount of certificate of need application fees without being received by the Division of Certificate of Need.

(8) Provide a statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does establish fees directly in accordance with KRS 216B.040(3)(c).

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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This change will only affect local governments which may apply for a Certificate of Need.
3. State the aspect or service of local government to which this administrative regulation relates. A certificate of need is only required if the local government proposes to establish a nonexempt licensed health care service or facility. The most common circumstance would be the establishment of an ambulance service.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is 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 (+/-): unknown
Expenditures (+/-): unknown

Other Explanations: Since the proposed regulation replaces the fee schedule with a more commonly applied fee rate, it is difficult to quantify an overall percentage change. However, the following table illustrates the expected differences in the current and proposed CON application fee based upon identical capital expenditure estimates:

<table>
<thead>
<tr>
<th>Estimated Capital Expenditure</th>
<th>Application Fee Under Current Fee Structure</th>
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<td>$750</td>
<td>400% Increase</td>
</tr>
<tr>
<td>$100,000</td>
<td>$500</td>
<td>$500</td>
<td>200% Increase</td>
</tr>
<tr>
<td>$200,000</td>
<td>$1,000</td>
<td>$1,000</td>
<td>No Change</td>
</tr>
<tr>
<td>$500,000</td>
<td>$1,000</td>
<td>$2,500</td>
<td>250% Increase</td>
</tr>
<tr>
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STATEMENT OF EMERGENCY
900 KAR 6:050E

This emergency administrative regulation is being promulgated to give timely effect to the provisions of Governor Fletcher's Executive Order of December 29, 2005 (Executive Order 2005-1376) regarding certificate of need by revising the certificate of need administrative regulation. Failure to enact this administrative regulation on an emergency basis would be in conflict with KRS 216B.040(2)(a), which requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWESTELL, Secretary

- 1584 -
Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation; and

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B, or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation. An application is postmarked on or before the deadlines established by Section 4 of this administrative regulation shall be accepted by the cabinet as having been timely filed.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; and

(b) The applicants has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete may be amended at a public hearing to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b) The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.
(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 2168.095(3)(a) and Section 8 of this administrative regulation shall be as follows:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment and new technological developments shall be given on the third Thursday of the following months:

- 1. January; and

(b) Public notice for residential hospice facilities, hospice agencies and home health agencies shall be given on the third Thursday of the following months:

- 1. February; and
- 2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services and rehabilitation agencies shall be given on the third Thursday of the following months:

- 1. March; and
- 2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities and personal care beds shall be given on the third Thursday of the following months:

- 1. April; and
- 2. October.

(e) Public notice for acute care hospital beds, psychiatric hospital beds, special care neonatal beds, [hospital, psychiatric] comprehensive physical rehabilitation beds, chemical dependency beds [facilities], ambulatory care centers, freestanding ambulatory surgical centers, primary care centers with outpatient diagnostic and surgical services, and birthing centers shall be given on the third Thursday of the following months:

- 1. May; and

(f) Public notice for long-term care beds and acute care hospitals including all other State Health Plan-covered services to be provided within the proposed acute care hospital shall be given on the third Thursday of November.

(g) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:

- 1. June; and
- 2. December.

(h) A proposal not included in paragraphs (a) through (g) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 8 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review requested pursuant to Section 8 of this administrative regulation. Applications for which nonsubstantive review status has been requested pursuant to KRS 2168.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 2168.095(3)(a) through (e) shall be mailed to affected persons.

(6) A determination that an application is complete shall:

(a) Indicate that the applicant has minimally responded to the necessary items on the application;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request; or

2. The applicant requests in writing that the cabinet review its application as submitted.

(8) If, upon the receipt of the additional information, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete; and

2. Review of the application for the approval or denial of a
A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(10) If the application, or if the information submitted, is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(12) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5.020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(c) An application seeking to reestablish a licensed healthcare facility, service, or service, which was provided at the healthcare facility, and which was voluntarily discontinued by the applicant, shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare facility or service;

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and which was otherwise eligible for relicensure;

(d) Was not an express condition of any subsequent Certificate of Need approval; and

(e) Did not occur less than twenty-four (24) months prior to the submission of the application to reestablish;

2. The proposed healthcare service shall be provided within the same service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location;

4. The application does not seek to reestablish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the applicant has identified a need for the proposal in the geographic area defined in the application;

(b) If the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application;

(c) For purposes of reviewing applications for long-term care beds other than personal care beds;

1. A nursing facility (NF) bed shall:

a. Include long-term care beds licensed as Alzheimer beds, intermediate care beds, skilled nursing beds, nursing facility beds, and nursing home beds and

b. Not include personal care beds, nursing home beds established under the continuum of care retirement community (CCRC) provisions of this administrative regulation, or long-term care beds located in state or federally operated facilities.

2. The average number of empty beds for a county shall be calculated by multiplying the number of nonstate and non-CCHC licensed NF beds as reported in the cabinet's latest Annual Long-Term Care Services Report times the occupancy percentage for the county as also reported in the cabinet's latest Annual Long-Term Care Services Report.

3. The number of beds being requested by the applicant shall equal A.

4. As reported in the cabinet's latest Annual Long-Term Care Services Report, the number of patients from the applicant's county of location who found NF bed placement in a noncontiguous county shall equal B.

5. The average number of empty beds in the county of application plus all counties contiguous to the county of application shall equal C.

(b) For purposes of reviewing applications for long-term care beds other than personal care beds. Consistency with Criterion 2 (Need) shall only be found if:

A + B ≥ C

(3) Accessibility. The cabinet shall determine whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. The cabinet shall determine:

(a) Whether the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) Whether the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) Whether it is economically feasible for the applicant to implement and operate the proposal; and

(b) Whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services. The cabinet shall determine:

(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) The cabinet may grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b) The change of location or relocation is within the same county, or

(c) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.495 and is to the same campus as a licensed psychiatric residential treatment facility.
(2) In addition to the projects specified in KRS 2169.095(3)(a) through (f) (f), the Division (Office) of Certificate of Need may grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves the establishment of an ambulatory surgery center by an unlicensed ambulatory surgery center that was existing and operating by July 15, 1997; if:

4. The unlicensed ambulatory surgery center was initially established as a private office or clinic of a physician; and

2. The application to establish or expand was declared complete prior to January 8, 2003;

(c) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 2168.020(4), if the number of nursing facility beds so converted are delicensed;

(d) [Removed]

(e) The proposal involves an application to establish a rehabilitation agency;

(f) The proposal involves an application to [acquire and relocate] relocate nursing facility beds from one long-term care facility to another long-term care facility and the requirements established in this paragraph are met.

1. If the [acquisition and relocation takes place] takes place within

2. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application;

2. If the relocation is to be from one county to another county, the following restrictions shall apply:

a. The letter of Intent shall be filed no later than August 29, 2005; and

b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application;

3. The selling facility shall be located in a county that had a nursing facility bed occupancy rate of less than ninety-five (95) percent (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report;

4. The acquired beds shall only be relocated to a county whose nursing facility bed occupancy was ninety-five (95) percent or greater (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report; and

5. A long-term care facility shall not sell or acquire more than ten (10) of its licensed nursing facility beds; or

6. The hospital from which such beds are relocated delicenses those beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this section:

a. The relocating hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) such beds unless the relocated beds represent all of its neonatal Level II beds.

(f) The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds;

2. Not convert special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

3. Convert and implement the beds on-site at the hospital's existing licensed facility, and

4. Delicense the same number of psychiatric or chemical dependency beds that are converted;

(g) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds.

(h) If an application is denied nonsubstantive review status by the Division (Office) of Certificate of Need, the application shall automatically be placed in the formal review process.

(4) An application is granted nonsubstantive review status by the Division (Office) of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5) If an application is granted nonsubstantive review status by the Division (Office) of Certificate of Need, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings. Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Division (Office) of Certificate of Need, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Division (Office) of Certificate of Need shall not be reviewed for consistency with the State Health Plan.

(7) The cabinet shall approve applications for certificates of need that have been granted nonsubstantive review status by the Division (Office) of Certificate of Need if:

(a) The application does not propose a capital expenditure; or

(b) The application does propose a capital expenditure and the cabinet finds that the capital expenditure is proposed to be made is required. The cabinet shall find that the facility or service with respect to which the capital expenditure is proposed to be made is required, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove applications for certificates of need that have been granted nonsubstantive review if:

(a) The cabinet finds that the applicant is not entitled to nonsubstantive review status; or

(b) The cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status by the Division (Office) of Certificate of Need within thirty-five (35) days of the date that public notice is given that nonsubstantive review status has been granted.

(10) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 2168.000 and Section 17 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 2163.115.
Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:
(a) Verification that the review criteria for approval have been met;
(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service’s certificate of need and license;
(c) Notice of appeal rights; and
(d) The amount of capital expenditure authorized, if applicable.
(3) Written notification of disapproval shall include:
(a) The reason for the disapproval; and
(b) Notice of appeal rights.
(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.

(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing.
(b) If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.
(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timelines set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person if the application is subject to formal review, or an affected person if the application has been granted nonsubstantive review within:
(a) Ten (10) days after the application has been granted nonsubstantive review status; or
(b) Fifteen (15) days after the application has been reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant’s decision to withdraw the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:
(a) The person is not a hospital, and the person is licensed by the appropriate Kentucky licensing authority to provide the service necessary to alleviate the emergency; or
2. The person is a hospital, and the hospital has an already-issued certificate of need to provide the service necessary to alleviate the emergency;

(b) The Division [Office] of Certificate of Need is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and
(c) The Division [Office] of Certificate of Need acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Division [Office] of Certificate of Need shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services, which shall contain the following information:
(a) A detailed description of the emergency which shall include at least the following information:
1. A description of health care services that will be provided to the persons on the persons whose services will be provided, including proof of eligibility for the service;
2. A list of the providers in the county licensed to provide the services that will be provided during the emergency; and
3. Proof that:
   a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or
   b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;
(b) The steps taken to alleviate the emergency;
(c) The location or geographic area where the emergency services is being provided;
(d) The expected duration of the emergency.
(3) The Division [Office] of Certificate of Need may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency does exist.

(4) If the provision of service meets the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(6) Once a Certificate of Need is Issued, it shall be issued for the limited purpose of alleviating the emergency and shall remain in effect until the emergency ceases to exist. An emergency shall cease to exist if the person or persons to whom the service is being rendered no longer require the service or an existing or new provider becomes licensed or certified to provide the service for which the emergency has been declared and provides notice to the Division [Office] of Certificate of Need and the Office of Inspector General that it can meet the needs of the person or persons for whom the emergency service is being provided.

(7) When the emergency circumstance ceases to exist, the CON holder shall notify the Division [Office] of Certificate of Need that it is no longer providing the service and the Division [Office] of Certificate of Need shall notify the Office of Inspector General that the emergency no longer exists.
(8) The Office of Inspector General shall revoke the license of the emergency certificate of need holder upon notification of revocation by the Division [Office] of Certificate of Need.
(a) The emergency ceases to exist; or
(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfers of Certificates of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.
Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing the documents with the Division (Office) of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business (working) day after the due date.

(3) The Division (Office) of Certificate of Need shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business (working) day following the Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) [Health facilities established without a certificate of need pursuant to KRS 216B.020(3)(a) shall not be considered affected persons for purposes of KRS 216B.050 and shall not have the right to request a public hearing pursuant to KRS 216B.056.]

(2) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.540. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(3) Unless otherwise specified herein, all hearings shall be conducted pursuant to this section.

(4) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

(4) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the Certificate of Need (CON) newsletter if applicable; and

(c) Provided to members of the general public through public information channels.

(5) [A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Division (Office) of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.]

(6) Any dispositive motion made by a party to the proceedings shall be filed and served [with the hearing officer] at least three (3) business (working) days prior to [the scheduled date of] the hearing.

(7) [The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

2. Formulate and submit stipulations to facts, laws, and other matters;

3. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

4. Rule on any pending motions for discovery or subpoenas; or

5. Schedule dates for the submission of proof of testimony, further preliminary conferences, and submission of briefs and documents.

(8) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;

(b) Witness List, Form #4; and

(c) Exhibit List, Form #5 and attached exhibits.

(9) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new Notice of Appearance, Form #3; and

2. Either:

a. Incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5); or

b. File amended Forms #4 and #5.

(10) A new party to the hearings shall file original Forms #3, #4 and #5.

(11) Forms shall be filed in accordance with subsection (8) of this section.

(12) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(13) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing, including determining the manner or form in which evidence may be presented as well as imposing reasonable and appropriate limits on the time allotted to each party to present their respective cases.

(14) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses-on;

4. Matters covered in direct examination; and

2. At the discretion of the hearing officer, other matters relevant to the issues.

(15) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(16) The hearing officer may:

(a) Authorize or receive evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed; and

(b) [Act to exclude irrelevant, immaterial or unduly repetitious evidence; and]
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(13) Whether or not the hearing officer is bound to consider evidence or exclude evidence or information which is irrelevant, immaterial, or unduly repetitious, the hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to the persuasiveness of such testimony.

(16) Witnesses shall be examined under oath or affirmation.

(15) Each party shall have the opportunity to present its case in the following manner:

(a) Make opening statements, although each party is limited to twenty (20) minutes each;

(b) Introduce direct testimony of relevant, pertinent witnesses, although all such testimony shall be submitted in writing;

(c) Offer documentary evidence into the record;

(d) Make closing statements, although each party is limited to twenty (20) minutes each;

(e) Conduct reasonable cross-examination of opposing witnesses;

1. Matters covered in direct examination and
2. Other matters which the hearing officer determines are relevant, pertinent, and productive in resolving the disputed issues.

(16) The direct testimony of witnesses shall be presented in the following manner:

(a) In writing;

(b) In the form of questions and answers or a narrative statement;

(c) Sworn or attested to under the penalty of perjury; and

(d) All such individuals shall make themselves available at the time of the hearing for purposes of cross-examination.

(17) At least five (5) business days prior to any hearing, the direct testimony of all witnesses shall be filed and served upon all parties. At least three (3) business days prior to any hearing, objections to any portion of the proposed direct testimony shall be filed and served upon all parties.

(18) The witness shall be subject to cross-examination.

(19) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original; and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and other parties at least:

1. Seven (7) business [working] days before the hearing for formal review applications; or

2. Five (5) business [working] days for nonsubstantive review applications.

(20) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(21) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(22) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.082(1) and 216B 095(1).

(23) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing; or

(c) Revocation of a certificate of need;

(d) Show cause hearing conducted in accordance with Section 16 of this administrative regulation.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if [whether] a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) In order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including affidavits, records or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) Health facilities established without a certificate of need pursuant to KRS 216B.030(a) shall not be considered affected persons for purposes of this section and shall not have the right to request a show cause hearing.

(a) In order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied by an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

1. Has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

2. Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(b) If a show cause hearing is held, the person being charged shall have the burden of showing cause why that person should not be found to:
1. Have established or to be operating a health facility or health service in violation of the provisions of KRS Chapter 216B or any administrative regulation; or

2. Be subject to the penalties provided by KRS 216B.090 for specific violations of the provisions of KRS Chapter 216B.

(2) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a specific violation of the terms or conditions which are a part of a certificate of need approval and license.

(3) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(4) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of their certificate of need approval and license.

(5) The cabinet shall conduct hearing proceedings in accordance with the provisions of Section 16 of this administrative regulation.

(6) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of proving that the allegations are without merit.

(a) Have not established or are operating a health facility or health service in violation of the provisions of KRS Chapter 216B or any administrative regulation; or

(b) Are not subject to the penalties provided by KRS 216B.090 for specific violations of the provisions of KRS Chapter 216B.

(7) In the event it is alleged that an office or clinic (hereinafter collectively referred to as "office") offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her findings of fact and proposed decision on whether the evidence has established the following:

(a) The practice claiming the exemption is 100 percent owned by any organization or organization by a physician or a group of physicians, dentists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption.

(b) The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan.

(c) Services or equipment covered by the State Health Plan which are offered or provided at the office shall be primarily provided to patients whose medical conditions are being treated or managed by the practice.

(d) A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption is responsible for all decisions regarding the care and treatment provided by the patients.

(e) Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office.

(f) Services or equipment covered by the State Health Plan which are offered or provided at the office are related to the professional services offered to patients of the practice claiming the exemption.

(8) Notwithstanding paragraphs (b) and (c) in this subsection, any practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. The radiologist shall perform all physician services (e.g., test interpretations) at the location where the diagnostic tests are performed and

2. The billing patterns of the practice indicate that the practice is not primarily a teaching facility and that it was organized to provide the professional services of radiology.

3. Nothing in this section is intended to prohibit diagnostic images from being interpreted by or through teleradiology.

(9) Notwithstanding paragraphs (a) through (h) in this subsection, an office owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

2. The office was established and in operation prior to January 1, 2006; or

3. The office does not provide any services or equipment covered by the State Health Plan; or

4. At the time the office began providing care and treatment to patients, it was located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

(i) Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption.

(j) Nothing in this section is intended to limit or prohibit the continued operation of an office which was established and in operation prior to January 1, 2006, and is operating pursuant to and in accordance with the following:

1. Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office;

2. Provisions of an Attorney General opinion issued specifically with respect to that office; or

3. An order issued with respect to that office by a court of competent jurisdiction in the Commonwealth of Kentucky.

(k) For purposes of this section, "Qualified Academic Medical Center" means:

1. Any institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

2. Any institution of higher education, organization, or other entity which directly or indirectly owns or is in joint ownership with the State Health Plan of agencies established by the State Health Plan which is operated within the Commonwealth of Kentucky;

3. Any individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code as a result of supporting or operating in support of any institution, organization, entity, or other person of a type or types referenced in subsection (a) of this paragraph.

(l) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation of the order not less than twenty (20) days notice of its intent to conduct a hearing.

(1) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegations; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities less than fourteen (14) days prior to the date of the hearing and

(b) Published in the Kentucky Administrative Register if applicable.

(13) At least ten (10) days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a certificate of need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings by:

(a) Notice of Appearance, (Form #3);

(b) Witness List, (Form #4); and

(c) Exhibit List, (Form #5) and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds-in-support of his or her position that no action should be taken by the cabinet.

(17) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(18) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in
the administrative record maintained by the cabinet.

(17) [(4)] If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) [(4)] If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) [(6)] of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

Section 19. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits if there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or $100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than $500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is $500,000 to $4,999,999;

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, for projects if the capital expenditure authorized on the certificate of need is $5,000,000 to $24,999,999;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $25,000,000, if the capital expenditure authorized on the certificate of need is $25,000,000 to $49,999,999; and

(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000, if the capital expenditure authorized on the certificate of need is $50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B; and

(b) Subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) 

As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #6, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) Whether the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General; and

(b) A final cost breakdown has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that:

(a) The failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.088.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment; plans for implementation of the project;

(b) Projects for the purchase of equipment only; a copy of the purchase order;

(c) Projects involving the acquisition of real property; evidence of an option to acquire the site; or

(d) Construction or renovation projects; evidence that schematic plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds; documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment; documentation of approval for licensure and occupancy by the Office of Inspector General or the Kentucky Board of Emergency Medical Services; or

(c) Construction or renovation projects; the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, if applicable;

3. Documentation that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and

4. Enforceable contract with a construction contractor; or

(b) Projects for purchase of equipment only; evidence of approval for licensure and occupancy by the Office of Inspector General.

(12) For projects other than long-term care beds not deemed
complete, a fourth progress report shall include documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and
2. Evidence that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; or
2. For conversion projects:
   a. Schedule for project completion with projected dates;
   b. Documentation of final financing;
   c. Documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General;
   d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General.

(19) The cabinet may not assign any more than three (3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(21) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review shall be initiated;
(b) Request for information necessary for the review to which the cabinet does not have ready access; and
(c) A deadline for response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with Section 18(2) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion, Form #7.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a non-clinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a complete request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion. Health facilities established without a certificate of need pursuant to KRS 216B.020(4)(c) shall not be considered affected persons for purposes of this section and shall not have the right to request a hearing regarding an advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 18 of this administrative regulation.

(9) (9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) The advisory opinion is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition or Establishment of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required to include ICF/MR respite beds, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that a service or equipment has been added within ten (10) days of addition.

(2) Notice of Addition of a Health Service or Equipment (Form #9) shall be used in making the notification.

Section 24. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the Division of [Title of] Certificate of Need.

(2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file Form #11 thereby certifying that:

(a) All residents shall have a written agreement with the continuing care retirement community;
(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;
(c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;
(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care...
retirement community under this section, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident's guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Division of Aging Services at the time a move-out notice is given to a resident;

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The Division [Office] of Certificate of Need shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form #11 if all conditions are met. If all conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Division [Office] of Certificate of Need the payer source for each of its nursing home beds.

(7) Upon request, the continuing care retirement community shall provide the Division [Office] of Certificate of Need the number of each type of bed or living unit within the continuing care retirement community.

Section 25. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to continue operating as a critical access hospital.

Section 26. Swing Beds. (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.66 or 485 645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds which may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval shall be required.

Section 27. Pilot Angioplasty Program. The provisions of this section shall apply to the pilot project for primary angioplasty in hospitals without on-site open heart surgery ("pilot program") established in the 2000-2006 State Health Plan which is incorporated by reference in 900 KAR 5 020. (1) Hospitals participating in the pilot program shall immediately (within twenty-four (24) hours of the event or on the first business day following the event) report the following events to the Division [Office] of Certificate of Need by fax at (502) 564-0302 or e-mail (jnkl.cracraft@ky.gov):

(a) Death within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. The report shall indicate if the death was a "cardiac death" or a "noncardiac death";

(i) A death shall be considered a "cardiac death" if the death was due to any of the following:
   a. Acute myocardial infarction;
   b. Cardiac perforation/pericardial tamponade;
   c. Arrhythmia or conduction abnormality;
   d. Cerebrovascular accident related to, or suspected of being related to, the cardiac catheterization procedure. An event shall be considered a "cerebrovascular accident" if there were acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred:

(ii) During the index catheterization;

(iii) During the index hospitalization;

(b) Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or

(f) Any death in which a cardiac cause could not be excluded;

(2) A death shall be considered a "noncardiac death" if the death was not due to cardiac causes as described in subparagraph 1 of this paragraph.

(b) Emergency coronary artery bypass surgery (CABG) within twenty-four (24) hours of the procedure or hospital discharge. An event shall be considered to be an "emergency" if there is a sudden and often life-threatening mishap that arises in the course of, and as a result of, the performance of a cardiac catheterization or angioplasty procedure. It shall not include patients either transferred directly from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent/fatal threatening cardiac disease; or

(c) Shock within twenty-four (24) hours of the procedure or hospital discharge.

(2) Hospitals participating in the pilot program shall report to the Division [Office] of Certificate of Need in writing within seven (7) [calendar] days, any of the following events:

(a) Cerebrovascular accident, which are acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred within thirty (30) days after the catheterization but were not clearly related to the procedure.

(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure;

(c) Recurrent Q wave or Non-Q wave Myocardial infarction (MI) during the initial hospitalization;

(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These shall include:

1. Hematomas more than four (4) centimeters;
2. Retropertoneal Bleed;
3. False Aneurysm;
4. AV fistula;
5. Peripheral ischemia/nerve injury; or
6. Hemolysis and Hemolytic anemia.

(3) Hospitals participating in the pilot program shall:

(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) with its collaborating tertiary hospital or with practicing interventional cardiologists. The membership of the Joint PI Committee shall, at a minimum, include each of the following disciplines: physicians, nurses and administrators from both the pilot hospital program and the collaborating tertiary hospital;

(b) Convene the Joint PI Committee at least quarterly but sooner if twenty-five (25) patients have been treated to review the care provided to patients under the pilot program. This review process shall focus on patient outcomes and, at a minimum, include:

1. An assessment of the appropriateness of the selection of each patient entered into the pilot program;
2. All complications, any adverse outcomes, number of the patients requiring and reason for transfer to a tertiary facility;
3. The technical quality of the catheterization and angioplasty...
procedures performed; and
4. The "door to cath lab time" and "door to treatment time";
(c) Develop and implement a plan of correction for any problems identified;
(d) Develop a process for including the findings of the Joint PI Committee's review in the pilot program hospital's performance improvement program;
(e) Require the Joint PI Committee to make a quarterly recommendation to the Division [Office] of Certificate of Need whether the pilot program should continue; and
(f) Require all staff (including, at a minimum, interventional cardiologists, nurses and technicians) as well as representatives of the Emergency Department and Critical Care Unit staffs participating in the pilot program PI process, to attend a minimum of one (1) meeting of the Joint PI Committee per year.
(4) Performance of primary angioplasty (as measured by quality indicators including mortality, morbidity, and adverse reactions) at a pilot hospital shall be comparable, on a risk adjusted basis, to the performance of existing angioplasty programs in Kentucky and with similar organizations nationally, according to the National Cardiovascular Data Registry.

(a) If the outcomes are worse at a pilot hospital, that facility shall file and implement a plan of correction with the Division [Office] of Certificate of Need.
(b) If the facility's results do not improve after one (1) quarter of implementing a plan of correction, the Division [Office] of Certificate of Need may terminate the facility's participation in the pilot program.
(5) Hospitals participating in the pilot program shall:
(a) Continue to make available the cardiac catheterization service twenty-four (24) hours per day and seven (7) days per week;
(b) Develop policies and procedures that will assure that all interventional cardiologists performing primary angioplasty procedures at the pilot program hospital will maintain an appropriate level of professionalism as a member of the team performing primary angioplasty at the pilot program hospital. The policies and procedures shall detail the process the physician director will utilize to assure the establishment, maintenance and monitoring of the proficiency of each interventional cardiologist;
(c) Maintain a collaborative association and a current, valid collaboration agreement with a tertiary hospital including Joint PI and staff education programs; and
(d) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. At least thirty (30) of these angioplasty procedures shall be primary angioplasty procedures, excluding patients that have rescue angioplasty procedures performed.
(6) The time frame for measuring compliance with procedural utilization requirements shall begin six (6) months after the date of the physician director's notification to the Division [Office] of Certificate of Need that all training requirements have been fulfilled. Within twelve (12) months from the "start date," the hospital shall have performed eighteen (18) primary angioplasty procedures or shall receive a warning that approval to participate in the pilot program may be withdrawn.
(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department's letter of approval, the hospital shall have performed at least another eighteen (18) procedures (a total of thirty-six (36) primary angioplasty procedures) or the program may be discontinued at that site.
(8) Each site shall continue to perform eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (36) primary angioplasty procedures per year, or the program may be discontinued at that site.
(9) All physicians performing percutaneous coronary intervention (PCI) at a pilot program hospital shall:
(a) Continue to perform no fewer than one hundred (100) cardiac catheterization procedures per year (total diagnostic and therapeutic). At least seventy-five (75) procedures shall be angioplasty procedures unless the procedures are being performed at a facility at which more than four hundred (400) angioplasty procedures are being performed per year; and
(b) Maintain credentials at a hospital at which that operator performs elective angioplasty procedures.
(10)(a) All staff that are hired after the completion of the initial training at the pilot program hospital shall complete a training program that mirrors the initial training program. The relevant collaborating tertiary and pilot program hospitals shall develop this training program.
(b) Training of all staff, including, at a minimum, all interventional cardiologists, nurses and technicians, shall be performed on the intra-aortic balloon pump annually.
(c) All staff involved in providing PCI, including the interventional cardiologists, nurses and technicians, shall have a current Advanced Cardiac Life Support (ACLS) certification.
(d) Inservice programs shall, at a minimum, be based upon need identified through staff evaluations and quality assurance processes.
(11) The Division [Office] of Certificate of Need may discontinue the pilot program at a participant hospital at any time after reviewing the following:
(a) Quarterly reports made by the American College of Cardiology - National Cardiovascular Data Registry (ACC-NCDR);
(b) Records obtained through an audit;
(c) Peer review reports; or
(d) Reports on serious adverse events.
(12) Upon notification to the hospital by the Division [Office] of Certificate of Need, the hospital shall terminate the pilot program and cease to perform primary angioplasty procedures.
(13) In order to assist the Division [Office] of Certificate of Need in evaluating the pilot program, the performance of pilot hospitals, and the formulation of recommendations for continuing or modifying the project, the Division [Office] of Certificate of Need may collaborate with university based researchers to:
(a) Evaluate and compare performance data of pilot hospitals with existing Kentucky angioplasty programs; and
(b) Conduct an evaluation of the short-and long-term outcomes of patients undergoing primary angioplasty at pilot hospitals with those patients transferred to hospitals with open heart surgical backup.
(14) The Division [Office] of Certificate of Need shall review reports from the collaborating university based researchers as well as quarterly reports made by the ACC-NCDR, records obtained through audit, peer review reports and reports of serious adverse events in order to develop recommendations for continuing, discontinuing, or modifying the pilot program. If the project is continued, these recommendations shall include establishing criteria for determining need to expand angioplasty services to additional hospitals without on-site surgical backup, qualifications of those hospitals, and ongoing requirements for a hospital's continued provision of this service.
(15) The Division [Office] of Certificate of Need may convene all hospitals participating in the pilot program on a regular basis for the purpose of discussing and assessing the status of the implementation of the pilot program.
(16) Three (3) years from the start date of the pilot program, the Division [Office] of Certificate of Need shall publish a report on the program. The report shall:
(a) Indicate whether it is in the best interest of the Commonwealth to eliminate the requirement for open heart surgery for hospitals to perform therapeutic cardiac catheterization; and
(b) The requirements for patient selection, procedural volume, and staffing that hospitals shall continue to meet to provide this service if the Division [Office] of Certificate of Need finds that this service may be provided by hospitals in the absence of on-site open heart surgery.
Section 28. Psychiatric Residential Treatment Facilities. A letter of intent shall not be required for an application seeking to increase the number of beds at a psychiatric residential treatment facility (PRTF) as permitted by KRS 216B.450 and 216B.455 if the application is submitted by an eight (8) bed or sixteen (16) bed PRTF licensed and operating on July 13, 2004. The applications shall be granted nonsubstantive review status if the application demonstrates the applicant's ability to meet the following standards:
(1) Provision of psychiatric and nursing coverage to assure the continuous ability to manage and administer medications on crisis
situations but excluding those that may only be administered by a physician;

(2) Provision of direct care staffing with supervision to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint and the staff training necessary to implement them;

(3) Documentation shall be made available to each mental health professional and to the program director; and

(4) Documentation shall be reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

Section 29. Equipment Disclosure Report. (1) A Magnetic Resonance Imaging unit (MRI) utilized in the Commonwealth shall be disclosed to the Cabinet for Health and Family Services, Office of Health Policy. This applies regardless of whether the facility at which the unit is located is licensed by the Office of Inspector General or whether the owner or operator of the unit has obtained a Certificate of Need to utilize the unit.

(2) Licensed facilities are required to complete a survey regarding the presence of MRI units pursuant to 502 KAR 20:008. The purpose of this section is to create a similar reporting obligation for MRI units located at facilities which have not obtained or do not require a license to utilize such units.

(3) No later than August 1, 2006, the following information shall be submitted about every MRI unit utilized at an unlicensed facility in the Commonwealth:

(a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;
(b) Identification of designated contact person or authorized agent of each such facility;
(c) Make, model, serial number of each unit;
(d) Date the unit became operational at each site;
(e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational);
(f) Number of scans performed during the previous twelve (12) months; and
(g) Estimate of number of scans to be performed during the next twelve (12) months.

(4) The owner or operator of any MRI unit that becomes operational at an unlicensed facility after August 1, 2006, has thirty (30) days after use of the unit is commenced to provide the above information.

(5) The above information shall be provided by completion of "Equipment Disclosure Report" (Form #12). A copy of that form can be obtained, completed, and transmitted electronically by accessing the Office of Health Policy's Web site at http://chfps.ky.gov/chfp/con. A copy can also be obtained at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 3CB, Frankfort, Kentucky 40621.

(6) Within thirty (30) days of any such event, the designated contact person or authorized agent shall notify the Office of Health Policy about any change in the facility's address or the addition of another MRI unit as well as the discontinuation of any such units.

(7) Beginning January 2007 and continuing annually thereafter, all unlicensed facilities at which MRI units are utilized shall be required to provide the above information for use in the Annual Survey of Magnetic Resonance Imaging Services published by the cabinet.

(8) Failure to provide complete and accurate information in a timely manner shall be construed as a willful violation of this section and shall subject the owner or operator of the unit to a fine of not less than $100 nor more than $500 for each violation.

Section 30. Incorporation by Reference. (1) The following materials is incorporated by reference:
(a) Letter of Intent (Form #1) (10/12/99);
(b) Certificate of Need Application (Form #2A) (3/6/03);
(c) Certificate of Need Application for Ground Ambulance and Air Ambulance Providers (Form #2B) (6/15/99);
(d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C) (3/6/03);
(e) Notice of Appearance (Form #3) (3/6/03);
(f) Wives List (Form #4) (3/6/03);
(g) Exhibit List (Form #5) (3/6/03);
(h) Cost Escalation Form (Form #6) (6/15/99);
(i) Request for Advisory Opinion (Form #7) (3/6/03);
(j) Six (6) Month Progress Report (Form #8) (6/15/99);
(k) Notice of Addition of a Health Service or Equipment (Form #10) (6/15/99); and
(l) Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC) (Form #11) (11/29/00), and
(m) Equipment Disclosure Form (Form #12) (January 31, 2008).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Division of Office of Certificate of Need, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHAWN CROUCH, Executive Director
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWITTLE, Secretary
APPROVED BY AGENCY: January 30, 2005
FILED WITH LRC: January 31, 2005 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Shane O'Donely, 502-564-9589 ext. 3274

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the process by which the Certificate of Need Program shall be implemented.
(b) The necessity of this administrative regulation: Pursuant to KRS 2168.040, the cabinet may promulgate administrative regulations to establish the certificate of need review procedures.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 2168.040 which requires the cabinet implement a Certificate of Need program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update the regulation to reflect recent organizational changes as well as modify current procedures in an effort to improve administrative efficiency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will provide for the following changes: Replace references to the "Office of Certificate of Need" with the "Division of Certificate of Need"; Update the application batching cycles; Modify existing non-substantive review categories as well as additional new categories; Allow for the possible re-establishment of voluntarily terminated healthcare facilities or services; Improve procedures to conduct Certificate of Need application hearings and show cause hearings; Clarify the meaning of KRS 2168.020(2)(a) which is commonly referred to as "the physician's office exemption"; and Require the distribution and submission of a Magnetic Resonance Imaging Equipment Disclosure Form.
(b) The necessity of the amendment to this administrative regulation: To improve the efficiency and effectiveness of the current certificate of need process.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 2168.040 which requires the cabinet promulgate administrative regulations to establish the Certificate of Need review procedures.
(d) How the amendment will assist in the effective administration of the statutes: It will improve the efficiency and effectiveness
of the current certificate of need process and improve access to affordable quality healthcare for the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons applying for a certificate of need or individuals who may benefit from improved access to quality, affordable healthcare.

(4) Provide an assessment of how the above groups or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Persons applying for a certificate of need will encounter a simplified hearing process as well as additional opportunities to qualify for nonsubstantive review.

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

(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certificate of Need application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The modifications to this administrative regulation will not necessitate additional fees or funding.

(8) Provide a statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees or directly or indirectly increases any fees.

(b) "IDEA" means "Individualized Education Program"; and
(c) "IEP" means "Individualized Education Program" or "IEP" means a written plan for a child with a disability that is developed, reviewed, and revised in accordance with 707 KAR 1:320.

(f) "Recipients" means a Medicaid-eligible child under the age of twenty-one (21), including the entire month in which the child becomes twenty-one (21).

(f) "School-based health services" or "SBHS" means medically-necessary health services provided for in 907 KAR 1:034 and as specified in an individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR 1:034.

Section 2. Provider Requirements. (1) A school district that requests to participate as a school-based health care provider shall be certified by the Department of Education.

(2) The Department of Education may grant certification to a district that agrees to:

(a) Provide services as required by IDEA, 20 U.S.C. 33, as and specified in an approved individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;
(b) Comply with the requirements for provision of services required by IDEA as outlined in 707 KAR 1:320.
(c) Employ or contract with healthcare professionals who meet the qualifications specified in Section 4 of this administrative regulation;
(d) Provide the Department of Education with a proposed quality assurance outline;
(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C 33;
(f) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:
   1. Name;
   2. Credentials;
   3. Salary;
   4. Fringe benefit percentages; and
   5. Contract amounts.

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2. A transportation service shall be provided using a type of vehicle which:
   a. Meets the specifications established by KRS 156.153, 702 KAR 5:060, and 702 KAR 5:130; and
   b. Is appropriate for the child's disability; and
   c. A transportation service shall not be covered for transportation:
     a) To and from home and the school; or
     b) Provided by a member of the recipient's household if that person
        is not an employee of the school district.

(3) A covered service:
   a. Shall not be limited by site of service;
   b. May be provided to:
      1. A group of no more than six (6); or
      2. In a one-on-one situation; and
   c. May include assessment, evaluation, treatment, and collat-
      eral components.

(4) An assessment or evaluation conducted prior to the estab-
    lishment of an individualized education program shall be covered if
    the individualized education program is subsequently developed
    and implemented.

Section 4. Staffing Requirements. School-based health services
shall be reimbursable if provided by a professional acting
within his scope of practice as defined by state law and as pro-
vided in this section.

(1) A nursing service shall be provided by:
   a. An advanced registered nurse practitioner with a current
      license from the Kentucky Board of Nursing;
   b. A registered nurse with a current license from the Kentucky
      Board of Nursing;
   c. A licensed practical nurse with a current license issued by
      the Kentucky Board of Nursing, under appropriate supervi-
      sion and delegated authority; or
   d. A health aide if:
      1. The aide is under the supervision of a specific registered
         nurse or advanced registered nurse practitioner;
      2. The supervising registered nurse or advanced registered
         nurse practitioner has trained the aide for the specific nursing
         service for the specific recipient; and
      3. The supervising registered nurse or advanced registered
         nurse practitioner has verified in writing that the aide has appropri-
         ate training and skills to perform the specific service in a safe, ef-
         fective manner.

(2) Audiology services shall be provided by an audiologist with
a current license from the Kentucky Board of Speech-Language
Pathology and Audiology.

   a. Speech and language services shall be provided by:
      a) A speech-language pathologist with:
         1. A current license from the Kentucky Board of Speech-
            Language Pathology and Audiology; or
         2. A masters-level certification issued by the Kentucky Educa-
            tion Professional Standards Board; or
      b) A speech-language pathology assistant who:
         1. Has:
            a. A current license from the Kentucky Board of Speech-
               Language Pathology and Audiology; or
            b. A baccalaureate-level certification issued by the Kentucky
               Educational Professional Standards Board; and
         2. Is under the supervision of a licensed or certified masters-
            level speech-language pathologist in accordance with KRS
            334A.033, 334A.080 and 161.053.
   b. Occupational therapy services shall be provided by:
      a) An occupational therapist with a current license from the
         Kentucky Board of Licensure for Occupational Therapy;
      b) An occupational therapy assistant who is:
         1. Licensed by the Kentucky Board of Licensure for Occupa-
            tional Therapy to assist in the practice of occupational therapy; and
         2. Under the supervision of an occupational therapist; or
      c) An unlicensed occupational therapy aide who:
         1. Provides supportive services to occupational therapists and
            occupational therapy assistants; and
         2. Is under the direct supervision of a licensed occupational
            therapist.
(5) Physical therapy services shall be provided by:
(a) A physical therapist with a current license from the state Board of Physical Therapy;
(b) A physical therapist assistant with a current license from the state Board of Physical Therapy under the supervision of a licensed physical therapist;
(c) A physical therapist with a temporary permit issued by the state Board of Physical Therapy under the supervision of a licensed physical therapist;
(d) A student of physical therapy under the supervision of a licensed physical therapist; or
(e) A physical therapy aide under the direct on-site supervision of:
   1. Licensed physical therapist; or
   2. Licensed physical therapist assistant in accordance with the provisions of 201 KAR 22:053, Section 5.
(6) Mental health services shall be provided by:
(a) An individual currently licensed by the Kentucky Board of Examiners of Psychology in accordance with KRS Chapter 319 as a:
   1. Licensed psychologist;
   2. Licensed psychological practitioner;
   3. Certified psychologist with autonomous functioning;
   4. Certified psychologist; or
   5. Licensed psychological associate;
(b) A school psychologist currently certified by the Kentucky Education Professional Standards Board;
(c) A school social worker currently certified by the Kentucky Education Professional Standards Board;
(d) A licensed clinical social worker currently licensed by the Kentuck Board of Social Work;
(e) A licensed social worker currently licensed by the Kentucky Board of Social Work;
(f) A certified social worker currently licensed by the Kentucky Board of Social Work;
(g) A guidance counselor currently certified by the Kentucky Education Professional Standards Board;
(h) A psychometrist currently certified by the Kentucky Education Professional Standards Board; or
(i) An advanced registered nurse practitioner who has a specialty area in accordance with the American Nurses' Association Statement on Psychiatric Mental Health Clinical Nursing Practice and Standards of Psychiatric Mental Health Clinical Nursing Practice in accordance with 201 KAR 20:057;
(7) In order to provide an incident interpreter service, an interpreter [incident interpreter services shall be provided in accordance with the following:
(a) Effective July 1, 2003, interpreters shall be licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing as required by KRS 309.300 to 309.319.
(b) Minimum qualifications after July 1, 2003 shall be as follows:
1. Sign language interpreters shall:
   a. Be certified by the Registry of Interpreters for the Deaf or other national certifying body;
   b. Hold the intermediate level of the Kentucky Interpreting Skills Screening;
2. Cued speech interpreters shall demonstrate ability to perform at Level 2 of the National Cued Speech Association's certification examination; and
3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf.
(b) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the:
(a) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP); or
(b) National Blindness Professional Certification Board (NBPCB).
(d) Respiratory therapy services shall be provided by a practitioner certified by the Kentucky Board of Respiratory Care as required by KRS Chapter 314A.

Section 5. Reimbursement. (1) Reimbursement for SHHS shall be provided in accordance with 907 KAR 1.035, Section 5 [6].
(2) School-based health services providers shall certify expenditure of state or local funds to provide covered school-based health services to Medicaid-eligible children as specified in 702 KAR 3:285.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNISIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: January 11, 2006
FILED WITH LRC: January 20, 2006 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen 502-564-6204
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage provisions for school-based health services.
(b) The necessity of this administrative regulation: This administrative regulation establishes Medicaid coverage provisions for school-based health services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, and 605.115 authorize DMS to cover school-based health services for Medicaid-eligible children.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes Medicaid coverage provisions for school-based health services for Medicaid-eligible children.
(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 expands Medicaid transportation coverage to include transportation to and from a child's school building.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enhance and ensure recipient access to school-based health services.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by expanding Medicaid transportation coverage for children receiving school-based health services; thus, enhancing recipient access to the services.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by expanding Medicaid transportation coverage for children receiving school-based health services, thus enhancing recipient access to the services.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 95 school districts and 10,300 school-aged children who are Medicaid recipients will be affected by these amendments to this administrative regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This amendment will enhance recipient access to school-based health services by expanding Medicaid's transportation coverage to include transportation to and from a child's school building.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: School-based health services are provided to Medicaid eligible recipients under a contract with the Kentucky Department of Education (KDE) under a Memorandum of Understanding (MS 02-03-6399). Under the terms of this agreement, KDE will provide the state match to DMS for submitted and reimbursed claims. The terms of this agreement also make this program operational contingent upon funding being available. So, even though this administrative regulation is an expansion of services for this program, there will be no impact on the DMS budget as
a result of these changes.

(b) On a continuing basis: School-based health services are provided to Medicaid eligible recipients under a contract with the Kentucky Department of Education (KDE) under a Memorandum of Understanding (MS 02-03-6399). Under the terms of this agreement, KDE will provide the state match to DMS for submitted and reimbursed claims. The terms of this agreement also make this program optional and contingent upon funding being available. So, even though this regulation is an expansion of services for this program, there will be no impact on the DMS budget as a result of these changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The sources of revenue to be used for implementing and enforcing this administrative regulation will be federal funds authorized under Title XIX of the Social Security Act, and state revenues provided by the Department for Education.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation. If not, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

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

(9) Tierning: Is tierning appropriate? Tierning was not appropriate in this administrative regulation, because the administrative regulation applies equally to all 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.

STATEMENT OF EMERGENCY
921 KAR 4:116E

This emergency administrative regulation is necessary to meet the emergency declaration in HB 283 2006 GA. HB 283 provides $10,000,000 for the crisis component of the Low Income Home Energy Assistance Program (LIHEAP). The LIHEAP crisis component, established in 42 U.S.C. 8621, provides financial assistance to eligible low-income households so that they may avoid utility cut-off or heating fuel shortages from early January through April 15th every year. HB 283 allocated the additional funding to meet rising heating fuel costs seen this winter. Without the immediate effective date of this bill and corresponding emergency administrative regulation, the Cabinet for Health and Family Services and its partners, Kentucky's Community Action Network, would not have sufficient time to offer the LIHEAP crisis component and ensure that the most urgent home heating needs of Kentucky's low-income citizenry are met. Without this additional funding, low-income households would have limited, if any, alternatives for heating assistance this winter. The emergency administrative regulation will ensure that there is no loss of state funds newly allocated to the LIHEAP crisis component and that the health, safety, and welfare of Kentucky's low-income citizenry are safeguarded. An ordinary administrative regulation would not allow the agency sufficient time to offer the LIHEAP crisis component and utilize the additional funding provided in HB 283 from the General Assembly within the parameters of the Federal Low Income Home Energy Assistance Program, which runs from January through April 15th. This emergency administrative regulation is identical to the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary
VOLUME 32, NUMBER 9 - MARCH 1, 2006

(13) "Life-threatening situation" means a household is or shall be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) "Principal residence" means the place:
(a) Where a person is living voluntarily and not on a temporary basis;
(b) An individual considers home;
(c) To which, when absent, an individual intends to return; and
(d) Is identifiable from another residence, commercial establishment, or institution.

(15) "Subsidy component" means the heating component that provides an eligible household with:
(a) A one (1) time annual payment to the household’s energy provider; or
(b) Payment to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to an agency the following:
(a) Proof of household income;
(b) Statement of liquid resources;
(c) Most recent:
1. Heating bill;
2. Cooling bill; or
3. Verification that heating or cooling is included in the rent;
(d) Statement of household demographics; and
(e) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household Income shall be at or below 150 [140] percent of the poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(2) Liquid assets.
(a) The household shall have total liquid assets at time of application of not more than:
1. $1,000 [4,000-6,000]; or
2. $3,000 if at least one (1) member in the household is:
   a. Age sixty (60) or older; or
   b. Disabled; or
3. $4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and living expenses.

(b) An excluded asset shall be:
1. A vehicle;
2. A household or personal belonging;
3. A principal residence;
4. Cash surrender value of an insurance policy;
5. A prepaid burial policy;
6. Real property; and
7. Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.

(3) The household shall be responsible for paying:
(a) Home heating;
(b) Cooling costs; or
(c) Heating or cooling costs as an undesignated portion of the rent.

(4) Crisis component. In addition to meeting the criteria in subsections (1) through (3) of this section, an applicant shall:
(a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source; or
(b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat source; or
(c) Have received a notice of eviction for nonpayment of rent, if home heating cost is included as an undesignated portion of the rent.

(5) Summer cooling component. In addition to meeting the criteria in subsections (1) through (3) of this section, to be eligible to receive a window air conditioner unit, an applicant shall:
(a) Be without an adequate source of cooling; and
(b) Have a household member who:
1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician’s statement prepared on the physician’s letterhead;
2. Is sixty-five (65) years of age or older; or
3. Is under the age of six (6) years.

Section 4. Benefits. (1) For a subsidy component, payment to the household’s heating fuel provider shall be made for the full benefit amount as follows.
(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.
(b) The amount of benefits shall be based upon household income and type of heating fuel used.
(c) A household with the lowest income and highest heating season fuel cost shall receive highest benefits.
(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.
(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.

(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating crisis. A household living in federally assisted housing may be eligible.
(a) A benefit may be:
1. Fuel or other energy source for heating;
2. A space heater loaned on a temporary basis until:
   a. Fuel is delivered; or
   b. Another source is located to alleviate the crisis;
3. A blanket or sleeping bag; or
4. Emergency shelter.

(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.
(c) A household may receive assistance more than once (1) time, but shall not receive more than the maximum allowable for the primary heating fuel, minus a required copayment. The maximum allowable benefit shall equal cost for delivery up to:
1. Two (2) tons of coal;
2. Two (2) cords of wood;
3. 200 gallons of propane;
4. 200 gallons of fuel oil;
5. 200 gallons of kerosene; or
6. $250 [$435] for natural gas or electric.
(d) A household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating fuel.
(e) An eligible household, including a household residing in:
   1. Subsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.
   2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.

(3) The copayment amount shall be based on housing type and the household’s percentage of poverty, as follows:

<table>
<thead>
<tr>
<th>Percent Of Poverty</th>
<th>Copayment Percentage of Benefit for Households Residing in Nonsubsidized Housing</th>
<th>Copayment Percentage of Benefit for Households Residing in Subsidized Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-74%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>75-100%</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>101-130%</td>
<td>15%</td>
<td>20%</td>
</tr>
<tr>
<td>131% and over</td>
<td>25%</td>
<td>35%</td>
</tr>
</tbody>
</table>

(3) For cooling component benefits, a household shall be eligible for:
(a) A one (1) time annual payment to:
1. The household’s electric utility provider;
2. The landlord, if the cost of cooling is included as an undesignated portion of the rent.
3. Purchase a window air conditioner unit, as described in Section 3(5)(a) of this administrative regulation;
(b) Benefits based on:
1. The household’s level of poverty;
2. Subsidized housing with:
   a. Zero percent to seventy-four (74) percent of poverty receiving up to fifty (50) dollars; or
   b. Seventy-five (75) percent to 130 [140] percent of poverty receiving up to seventy-five (75) dollars;
3. Nonsubsidized housing with:
   a. Zero percent to seventy-four (74) percent of poverty receiving up to $175; or
   b. Seventy-five (75) percent to 130 [140] percent of poverty receiving up to $125.

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household’s:
1. Energy provider; or
2. Landlord, if the cost of heating is included as an undesignated portion of rent.
(b) At the recipient’s discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating.
(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:
(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;
(b) A vendor who supplies a heater, blanket, or emergency lodging; or
(c) A landlord, if heating cost is included in the rent.
(3) For the cooling component, cash benefits shall be paid to a:
(a) Household’s electric utility provider; or
(b) Landlord, if cooling cost is included in the rent.

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards in Section 8 of this administrative regulation shall be provided an administrative review by the agency.
(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 921 KAR 2.055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.
(a) An agency shall solicit vendors for all nonmetered fuels and shall establish an approved vendor list.
(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.
(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.
(d) A prospective vendor shall:
   1. Allow agency and authorized federal or state representatives to inspect records upon request;
   2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;
   3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;
   4. Provide fuel as specified and at the price quoted;
   5. Comply with federal and state law pertaining to equal employment opportunity; and
   6. Comply with billing procedures established by the agency.
(e) A household shall select a vendor from the agency’s approved vendor list.
(2) Crisis component.
(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.
(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.

(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.
(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:
   1. Eighteen (18) hours for a life-threatening situation; or
   2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.
(2) Under a crisis or cooling component, benefits shall be authorized so that:
   (a) Crisis situation is resolved within forty-eight (48) hours; or
   (b) Life-threatening situation is resolved within eighteen (18) hours.
(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.
(2) If additional federal funds are made available, LIHEAP may be retroactive under the same terms and conditions as in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.
(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:
(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency’s percentage of the statewide population at or below 100 percent of the poverty level.
(b) $400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies as needed.
(c) $25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed $300 for each family if the payment:
   (a) Prevents the removal of a child from the family; or
   (b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:
(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.
(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.
(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.
(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.
(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state’s annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 56. Subpart H, sections 56.83 to 56.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 278 East Main Street, Frankfort, Kentucky 40621.

TOM EMBERTON, JR., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky's LIHEAP.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has responsibility under 42 U.S.C. 6821 to implement the LIHEAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing eligibility and benefits criteria for LIHEAP.

(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: The amendment to this administrative regulation modifies the maximum utility benefit payable under the LIHEAP crisis component from $125 to $100 and increases the household income allowable limit under the LIHEAP from 110% to 130% of the Federal Poverty Guidelines and allowable liquid assets from $1,500 to $2,000. The amendment also provides an allowance for additional liquid assets (i.e., $3,000) in the event a household member is disabled or age 60 or older.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary as a result of HB 283 2006 GA, which allocated an additional ten million dollars of State General Funds to the LIHEAP crisis component. The increase in utility benefit and income threshold is necessary to respond to rising heating costs and the resulting impact on a larger segment of Kentucky's population. The increase in utility benefits will ensure that the LIHEAP crisis component will better meet the actual heating costs experienced by eligible low-income households as a result of recent increases in fuel costs. The increase in income threshold will allow the cabinet and its partners, Kentucky's Community Action Network, to offer assistance to additional vulnerable individuals and families, including those who may be leaving welfare for work, have a household member with a disability, or are elderly.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute through its modification of eligibility criteria (i.e., slight increase to the gross income level) and the increase in the crisis component utility benefit under LIHEAP, which better reflect current heating fuel costs.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by allowing the cabinet and its partners, in their implementation of LIHEAP, to serve more vulnerable households and increase the utility benefit under the crisis component.

(3) List the type and number of individuals, business organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with the Kentucky Association for Community Action, Inc., which subcontracts with the 22 community action agencies to provide LIHEAP benefits to Kentucky's 120 counties. Last year, Kentucky served approximately 200,000 households under the LIHEAP. Of those 200,000, approximately 109,657 households were served under the LIHEAP subsidy component, and 97,752 were served under the LIHEAP crisis component. This amendment and the additional funds provided under HB 283 2006 GA will allow the cabinet and its partners to serve an additional 50,000 households under the crisis component in winter 2006.

(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 Community Action Network will be able to extend services to more low-income households, thereby better safeguarding households who are transitioning from welfare to work, whose household member has a disability or who are elderly. In addition, the increase in utility benefits available through the LIHEAP crisis component will better reflect actual heating fuel costs seen in winter 2006.

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

(a) Initially: HB 283 allocates $10,000,000 in additional funding for the LIHEAP crisis component.

(b) On a continuing basis: The U.S. Department of Health and Human Services allocates annual LIHEAP funds. The cabinet will administer and implement LIHEAP in Kentucky within those and any state appropriations.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation, particularly the LIHEAP crisis component, in winter 2006 will be funded through a mix of existing federal funds and the additional funds provided through HB 283. In subsequent years, the implementation and enforcement of this administrative regulation will be 100% federal funds; however, any state funds made available will also 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: Any initial increase in funding was provided through the enactment of HB 283 2006 GA. The cabinet will implement and enforce this administrative regulation in subsequent years within any federal and state appropriations for the LIHEAP.

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

(9) TIERING: Is tiering applied? No, tiering is not applied, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 6821
2. State compliance standards, KRS 194A.050
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 6821
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. N/A
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, February 13, 2006)

11 KAR 5:130. Student application.

RELATES TO: KRS 164.744(2), (3), 164.753(4), 164.7535,
164.760, 164.785
STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4),
164.7535
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.748(4) requires KHEAA to promulgate administrative regula-
tions pertaining to the awarding of grants, scholarships, and hon-
orary scholarships as provided in KRS 164.740 to 164.7821
(164.786). This administrative regulation prescribes the form to be
used by a student to apply for and establish financial need for
KHEAA grant programs.

Section 1. (1) In order to receive a KHEAA grant, the 2006-
(FAFSA) shall be completed and submitted in accordance with the
instructions provided on the FAFSA.
(2) An applicant shall indicate the choices of educational insti-
tutions on the application to be considered for the KHEAA grant. All
educational institutions listed on the FAFSA shall be used in the
determination of eligibility for a KHEAA grant program award.
(3) A person who submits a completed FAFSA shall not be eli-
gible for a KHEAA grant for an academic year in which the per-
son:
(a) Did not select on the application an educational institution
that participates in a KHEAA grant program;
(b) Is not:
1. A United States citizen or eligible noncitizen; and
2. A resident of Kentucky;
(c) Is a graduate student, except that a student enrolled in a
program of study designated as an equivalent undergraduate pro-
gram of study by the Council on Postsecondary Education shall not
be ineligible for a CAP grant by reason of this paragraph; or
(d) Will obtain a first baccalaureate degree before July 1 of the
academic year for which he is seeking financial assistance.

Section 2. Change of Application Data. The applicant shall
change or correct FAFSA data using the Student Aid Report
(SAR), which is provided to the applicant by the United States
Department of Education, and submit the change or correction
according to instructions on the SAR.

Section 3. Incorporation by Reference. (1) The 2006-2007
[2006-2007] Free Application for Federal Student Aid (FAFSA) and
its instructions are incorporated by reference.
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Higher Education
assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601,
Monday through Friday, 8 a.m. to 4:30 p.m.

JIM JACKSON, Chair
APPROVED BY AGENCY: November 22, 2005
FILED WITH LRC: December 14, 2005 at 11 a.m.
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.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, February 13, 2006)

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS
164.518(3) requires the authority to promulgate administrative regula-
tions for administration of the Early Childhood Development
Scholarship Program. This administrative regulation establishes
definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) *Academic term* means the fall,
spring, or summer semester or its equivalence under a trimester or
quarter system at a postsecondary education institution.
(2) *Authority* is defined in KRS 164.740(1).
(3) *Award year* means a period that begins July 1 of one (1)
calendar year and ends June 30 of the next succeeding calendar
year.
(4) *Capstone semester* means the culmination semester in an
Interdisciplinary Early Childhood Education (IECE)/Early Childhood
Program which;
(a) requires additional hours of direct work with children; and
(b) - and - may be listed as student teaching or a practicum.
(5) (4) *Early childhood facility* means:
(a) A licensed Type I or a Type II day care facility defined in
922 KAR 2.001 that is located in Kentucky;
(b) A certified family child care home pursuant to KRS
199.8682 and 922 KAR 2.001 that is located in Kentucky;
(c) An organization approved by the Office of Inspector Gen-
eral of the Cabinet for Health and Family Services to offer training
in early childhood development;
or
(d) A developmentally appropriate preschool program defined in
KRS 157.3175(2).
(6) (5) *ECDA* means Early Childhood Development
Authority.

Section 2. [6] *ECDA-approved early childhood development creden-
tial* means the Child Development Associate's credential or a
postsecondary, undergraduate degree, certificate or diploma that is:
(a) An associate degree in early childhood education or bac-
calaureate degree in interdisciplinary early childhood education, or
a related program that is approved by the Early Childhood
Development Authority; or
(b) The Kentucky Early Childhood Development Director's
Certificate.
(7) (6) *Eligible Institution* is defined in KRS 164.740(3).
(8) (7) *Participating early childhood facility* means an early
childhood facility that agrees to provide monetary incentives pursuant
to 11 KAR 16:00 to early childhood development scholarship
recipients employed by the facility.
(9) (8) *Participating educational institution* means an eligi-
ble institution located in Kentucky that:
(a) Actively participates in the federal Pell Grant Program;
(b) Offers a scholarship program curriculum;
(c) Has a contract in force with the authority relating to the
administration of the Early Childhood Development Scholarship
Program and other programs administered by the authority; and
(d) 1. is publicly operated;
or
2. is licensed by the Commonwealth of Kentucky;
b. Has operated for at least ten (10) years;
c. Offers a program of study not comprised solely of sectarian
instruction; and
(d) Admits as regular students only.
(i) High school graduates;  
(ii) Recipients of a general equivalency diploma; or  
(iii) Students transferring from another accredited degree granting institution.  
(11) "Preschool associate teacher" [as defined in 704-KAR 3:420] means a classified employee who:  
(a) is employed by a local school district in a paraprofessional role to organize, manage, and provide direct instruction to children below primary school age under the supervision of a qualified professional; and  
(b) Meets the requirements of 704-KAR 3:420.  
(12) [(40)] "Professional development counselor" means an individual employed by a regional child-care resource and referral agency with the responsibilities to recruit candidates, process the applications, and follow as indicated the procedures established in 11 KAR Chapter 16.  
(13) [(44)] "Professional development funds" means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).  
(14) [(49)] "Scholarship" means an Early Childhood Development Scholarship.  
(15) [(13)] "Scholarship program curriculum" means an academic course or series of courses that does not lead to a certificate, diploma, or degree in theology, divinity, or religious education offered by a participating educational institution needed to obtain an ECDA-approved early childhood development credential.  
(16) "Teaching assistant" means an instructional aide in a public school preschool program as set forth in 704-KAR 3:410.  

JIM JACKSON, Chair  
APPROVED BY AGENCY: November 22, 2005  
FILED WITH LRC: December 14 at 11 a.m.  
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  

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY  
Division of Student Services  
(As Amended at ARRS, February 15, 2006)  


RELATES TO: KRS 164.518  
STATUTORY AUTHORITY: KRS 164.518(3), 164.748(4)  

NECESSITY: FUNCTION, AND CONFORMITY: KRS 164.518(3) requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes the applicant selection process for the Early Childhood Development Scholarship Program.  

Section 1. Eligibility of Applicants. (1) Initial eligibility. To qualify for an Early Childhood Development Scholarship, an applicant shall:  
(a) Be:  
1. A citizen, national, or permanent resident of the United States;  
2. A Kentucky resident as determined by the participating educational institution in accordance with criteria established in 13 KAR Chapter 2 by the Council on Postsecondary Education for the purposes of admission and tuition assessment;  
3. a. Unless the applicant is seeking scholarship renewal and has registered for a capstone semester:  
   b. Employed at least twenty (20) hours per week in a participating early childhood facility;  
   c. Employed at least twenty (20) hours per week in a participating early childhood facility, except when current scholar is registering for a capstone semester which may prevent employment of a minimum of twenty (20) hours per week;  
   d. Employed to provide training at least twelve (12) times per year in early childhood development by a participating early childhood facility approved by the Office of Inspector General of the Cabinet for Health and Family Services to offer the training; or  
   e. Employed [(d)] Except as provided in subclause [(d)] of this clause, employed at least twenty (20) hours per week, providing direct instruction to children in a preschool associate teacher or as a teaching assistant in a public preschool program pursuant to KRS 164.748(4) by a participating early childhood facility [that is a developmentally-appropriate preschool program defined in KRS 164.518(2)];  
[(e)] An applicant shall not be employed on a regular basis as a lead teacher as described in 704-KAR 3:410, Section (7)(b).  
4. a. Except as provided in clause b of this subparagraph, enrolled in no more than nine (9) credit hours, or the equivalent under a trimester or quarter system, per academic term in the scholarship program curriculum at a participating educational institution[; except when registrant for the capstone courses which may require full-time student status];  
5. [(c)] Pursuing an ECDA-approved early childhood development credential;  
6. Eligible to receive professional development funds from another education program; and  
7. Maintaining satisfactory academic progress as determined by the participating institution; and  
(b) Satisfy all financial obligations to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.760, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause.  
(2) Renewal eligibility. Persons seeking additional early childhood development scholarships shall:  
(a) Meet the eligibility requirements of subsection (1) of this section; and  
(b) Be making satisfactory academic progress toward the completion of the ECDA-approved early childhood development credential as determined by the participating institution.  
(3) Appeal of determination.  
(a) A student denied a scholarship for a reason other than lack of funds may appeal the determination by the ECDA.  
(b) A student shall submit a written statement of appeal to the ECDA within fifteen (15) calendar days after the date of notice of denial.  
(c) If a student appeals a scholarship denial, the ECDA shall ensure that (The ECDA shall establish and make available to scholarship applicants written procedures for consideration of the student's appeal of the eligibility determination. The written procedures shall provide at a minimum]:  
(1) That a hearing officer or committee appointed by ECDA shall consider the student's appeal and make a decision on the issues involved; and  
(2) The student's due process rights [That the procedures shall ensure due process to the student, including the right to present information in support of his claim of eligibility and the right to be represented by legal counsel, are protected].  
(4) Commitment of service. A scholarship applicant shall commit that he or she shall subsequently render service:  
(a) For six (6) months at [the] participating early childhood facility upon obtaining the child development associate certificate, paid for in part by a scholarship;  
(b) For one (1) year at [the] participating early childhood facility upon obtaining the early childhood development credential of an associate degree or the Kentucky Early Childhood Development Director's Certificate, paid for in part by a scholarship; or  
(c) For six (6) months at [the] participating early childhood facility and one (1) additional year at an early childhood facility located in Kentucky upon obtaining the early childhood development credential of a baccalaureate degree, paid in part by a
Section 2. Application. (1) Prior to the beginning of each academic term, a person seeking an early childhood development scholarship shall obtain an Early Childhood Development Scholarship Application from the [professional development counselor, KHEAA Web site www.kheaa.com/proc_ecda.html, [Early Childhood Resource Center, an agency of the ECDA, or the authority] The applicant shall complete the on-line [and sign the] application.

(2) The applicant shall:
(a) Print the employer verification page from the completed application;
(b) Have this page certified by an authorized representative of the participating early childhood facility; and
(c) Submit the certified page to the professional development counselor on or before: [The applicant shall ensure that the completed application is certified by an authorized representative of the participating early childhood facility and that the completed application is received by the professional development counselor on or before:]
1. [65] July 1, or the next regular business day if July 1 falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
2. [66] November 15, or the next regular business day if November 15 falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested; or
3. [66] April 15, or the next regular business day if April 15 falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

3. The applicant shall also complete and submit to the United States Department of Education the Free Application for Federal Student Aid ("FAFSA"). This application may be completed either in paper format or electronically via the Internet.

Section 3. Selection Process. (1) The professional development counselor shall verify the application information and determine the eligibility of the applicant.

(2) The professional development counselor shall recommend scholarship awards for eligible applicants in the following order until funds are depleted:
(a) First, scholarships shall be awarded to eligible renewal applicants, ranked in order of the date and time the application is received by the professional development counselor;
(b) Next, scholarships shall be awarded to eligible new applicants, ranked in order of the date and time the application is received by the professional development counselor.

3. The professional development counselor shall forward to the ECDA the applications of those persons recommended to receive a scholarship and ensure that the applications are received by the ECDA no later than August 1.

(a) July 22 [August-1], or the next regular business day if July 22 [August-1] falls on a weekend or holiday, preceding the fall academic term for which the scholarship is requested;
(b) November 22 [December-1], or the next regular business day if November 22 [December-1] falls on a weekend or holiday, preceding the spring academic term for which the scholarship is requested;
(c) April 22 [May-1], or the next regular business day if April 22 [May-1] falls on a weekend or holiday, preceding the summer academic term for which the scholarship is requested.

4. The employer signature page shall be received by the ECDA no later than August 1, December 1, and May 1 of the appropriate semester.

5. [66] ECDA shall certify [approve] the eligibility determination of approved applicants, and compile a list of approved applicants and sort the list of applicants by the participating early childhood institution and academic term for which the scholarship is awarded and shall submit the list with the following information to the authority:
(a) The name and Social Security number of the applicant approved to receive a scholarship;
(b) The award amount for each eligible student to be deburred by the authority; and
(c) The total number of eligible students and total amount of awards.

Section 4. (1) Award amount. The scholarship amount awarded to an eligible applicant for an academic term shall be the amount of tuition actually charged for the academic term by the participating educational institution that the scholarship recipient will be attending based on the recipient's enrollment status, but shall not exceed:
(a) The amount of tuition charged for enrollment in nine (9) credit hours; and
(b) The award maximum. The maximum scholarship amount awarded to an eligible applicant for an award year shall be $1,500. [4,400.]

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) The Early Childhood Development Scholarship Application, January 2001; and, [is incorporated by reference];
(b) The 2006-2007 Free Application for Federal Student Aid ("FAFSA") [is incorporated by reference];
(c) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JIM JACKSON, Chair
APPROVED BY AGENCY: November 22, 2005
FILED WITH LRC: December 14, 2005 at 11 a.m.
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.

UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
Division of Regulatory Services
(As Amended at ARRS, February 13, 2006)

12 KAR 1:116. Sampling, analyzing, testing, and tolerances.

RELATES TO: KRS 250.021-250.111
STATUTORY AUTHORITY: KRS 250.081 [250.021-250.144]
NECESSITY, FUNCTION AND CONFORMITY: KRS 250.081 requires the director to prescribe seed sampling procedures, methods of analysis, testing and examining of seed, and tolerances. This administrative regulation prescribes the methods of sampling, analyzing, and testing seed, and establishes the tolerances to be applied in the administration of the Kentucky Seed Law and administrative regulations. KRS 250.081 authorizes the director to prescribe seed sampling procedures, methods of analysis, testing, and examining of seed, and tolerances.

Section 1. Definition. "Kentucky Seed Law" means KRS 250.021 through 250.111 and 12 KAR Chapter 1.

Section 2. The methods of sampling, analyzing, testing, and examining seed to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds".

Section 3. (a) The tolerances to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds".

Section 4. (a) Incorporation by Reference. (1) "Rules for Testing Seeds", issued by the Association of Official Seed Analysts in October 2005, is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.  - 1607 -
VOLUME 32, NUMBER 9 - MARCH 1, 2006

STATUTORY AUTHORITY: KRS 117.015(1)(a), 117.305(2), (3), (4) [148.426(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(a) authorizes the State Board of Elections to promulgate administrative regulations necessary to carry out its duties. KRS 117.305(2) requires the State Board of Elections to prescribe forms to be used by county boards of elections to report all canvassed votes. KRS 117.305(3) requires that the board promulgate administrative regulations to set reporting standards for canvass reports, and KRS 117.305(4) requires that the board promulgate administrative regulations to establish the proper procedures for conducting a canvass for each type of voting system approved by the board and in use in Kentucky. This administrative regulation establishes the reporting form to be used in the event of a canvass, reporting standards for an election if a canvass is requested and received in a timely manner, and establishes the proper procedures for conducting a canvass on the approved voting systems in use in Kentucky.

Section 1. (1) The Recanvass of Official Count and Record of Election Totals form, SBE 49A(1)-(794), shall be used by the county board of elections to report all canvassed votes.
(2) The county board of elections shall state the name of the county in which the canvass is being conducted [making the report], the date of the report, the date of the election, the office for which the canvass is being made, the name of each candidate for the office being canvassed, and the machine votes, absentee votes, provisional votes and total votes for each candidate. The report shall be signed by each member of the county board of elections.

Section 2. (1) The county board of elections shall file its canvass report, SBE 49A, immediately upon completion [on the Monday following the day] of the canvass [after the election] for those vote totals reported to the Secretary of State, pursuant to KRS 118.425(3).
(2) The county board of elections shall file its canvass report, SBE 49A, immediately upon completion [on the Monday following the day] of the canvass [after the election] for those vote totals reported to the county clerk, pursuant to KRS 118.425(2).
(3) The original of the canvass report, SBE 49A, shall be filed with the:
(a) Secretary of State if the candidate was voted for as specified by KRS 118.426(2), or
(b) County clerk if the candidate was voted for as specified by KRS 118.426(2).
(4) The county board of elections shall file the yellow copy of the canvass report, SBE 49A, for those vote totals reported to the Secretary of State and the county clerk with the county clerk.

Section 3. If KRS 117.305(1) requires a canvass, the provisions established in this section shall apply.
(1) In a general election, the county board of elections shall only check and tabulate the votes of the candidate requesting a canvass and each opposing candidate seeking the same office.
(2) In a partisan primary election, the county board of elections shall only check and tabulate the votes of the candidate requesting a canvass and each opposing candidate of the same political party seeking the same office.
(3) In a nonpartisan election, the county board of elections shall only count and tabulate the votes of the candidate requesting a canvass and each opposing candidate seeking the same office.

Section 4. A county board of elections shall canvass the votes recorded on the machine and voting method utilized, as follows:
(1) If an electronic voting system with a central tabulation system is used, the canvass shall be taken:
(a) By clearing the system, such as by setting the tabulation system to zero and resetting the votes recorded on the memory cartridges on election day by using the central tabulation system; or
(b) By comparing the results printout printed from each voting
machine on election day with the county-wide recapitulation sheet.

(2) If an electronic voting system without a central tabulation system is used, the recanvass shall be taken by comparing the results printout printed from each voting machine on election day with the county-wide recapitulation sheet.

(3) If a mechanical voting system is used, the recanvass shall be taken by:

(a) Comparing each machine counter with the individual precinct return sheets for accuracy;

(b) Comparing the individual precinct return sheets to the county-wide recapitulation sheets for accuracy; and

(c) Retailing the county-wide recapitulation sheet totals for accuracy.

(4) Paper ballots, which were judged to be valid by the county board of elections on election day and which were not counted using a central tabulation system but were hand-counted on election day, shall be recanvassed by utilizing the same procedures actually used to count those paper ballots on election day following the procedures for the uniform definition of a vote established by 31 KAR 6:030.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TREY GRAYSON, Chairman
APPROVED BY AGENCY: November 29, 2005
FILED WITH LRC: December 12, 2005 at noon
CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, February 13, 2006)


RELATES TO: KRS 39A.100, 117.045, 117.065, 117.075, 117.165, 117.167, 117.285, Chapter 424

STATUTORY AUTHORITY: KRS 39A.100(1)(k), 117.015(1)(b) NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1)(b) requires the State Board of Elections to promulgate administrative regulations establishing a procedure for election officials to follow if an election has been suspended or delayed as described in KRS 39A.100(1)(k). This administrative regulation establishes this procedure.

Section 1. Definitions. (1) "Affected county board of elections" means a county board of election that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(2) "Affected county clerk" means a county clerk in a county that is required to suspend or delay an election pursuant to an executive order issued pursuant to KRS 39A.100(1)(k).

(3) "Affected election district" means an election district for which a state of emergency has been declared for all or part of an election district as specifically described by the Governor in an executive order issued pursuant to KRS 39A.100(1)(k).

(4) "Precinct election officer" means an individual who has been appointed to serve as an election officer in a precinct in accordance with the provisions of KRS 117.045.

(5) "Voting place" means a place for voting established in accordance with the provisions of KRS 117.055.

Section 2. General Provisions. (1) Election officials shall follow the elections emergency contingency plan as specifically mandated by the governor through an executive order, pursuant to KRS 39A.100(1)(k), suspending or delaying an election.

(2) The procedures in the general election laws, KRS Chapters 115 to 121A, shall be applicable to an election conducted pursuant to the elections emergency contingency plan, unless superseded by:

(a) The Governor's executive order, pursuant to KRS 39A.100(1)(k) or

(b) Provisions of this administrative regulation except where the Governor's executive order, pursuant to KRS 39A.100(1)(k) and specific provisions of this administrative regulation, supersede the general election laws.

(3) County boards of elections shall establish procedures to implement the provisions of this administrative regulation at the local level and shall file the "County Board of Elections Notice of Establishment of Local Elections Emergency Contingency Plan Procedures" Form SBE 20 on or before the first day of March of each year in which a general election occurs.

(4) County boards of elections shall train all precinct election officers prior to each primary and general election on the procedures established by the county boards of elections to implement the elections emergency contingency plan during the training required by KRS 117.187.

Section 3. Notification. After the Governor has issued an executive order pursuant to KRS 39A.100(1)(k), the State Board of Elections shall notify all county clerks in the affected election districts or statewide, in accordance with the Governor's executive order.

Section 4. Voting Places. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall:

(1) Identify the number of voting places that are functional, that can be repaired, and that have been destroyed; and

(2) [shall] Establish new voting places, if [where] needed, in a manner consistent with KRS 117.055.

Section 5. Precinct Election Officers. If an affected county board of elections determines that new precinct election officers are required because of an emergency, the affected county board of elections shall use the same list of precinct election officers from the suspended election and may create a new list of additional precinct election officers in a manner consistent with the provisions of KRS 117.045.

Section 6. Procedures for Conducting an Election Rescheduled Prior to the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election, prior to the original date scheduled for an election by law, the affected county clerk shall ensure that the public receives prompt notification of the suspension or delay of an election in accordance with KRS Chapter 424, if possible, and any other means available.

(2) Absentee voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately:

(a) Suspend absentee voting being conducted pursuant to KRS 117.065(1)(c); and

(b) Secure all voting machines being used for absentee voting until absentee voting may be resumed in accordance with KRS 117.065(1)(c).

(3) Absentee ballots. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deposit all unvoted absentee ballots and related materials in a secured and locked storage container or area until absentee voting may be resumed in accordance with KRS 117.065(1)(c).

(4) Examination of voting equipment. (a) The date of examination of voting equipment, conducted pursuant to KRS 117.165, which has been previously noticed, but is affected by the suspension or delay of an election, shall be re-noticed pursuant to KRS Chapter 424, if possible, and any other means available.

(b) The affected county board of elections shall not conduct a reexamination of the voting equipment if the affected county board
of elections has already conducted the examination required by KRS 117.165 prior to receipt of the notice of the rescheduled election.

Section 7. Procedures for Conducting an Election Rescheduled After the Commencement of the Original Election Day. (1) Notification. After notification from the State Board of Elections of an executive order suspending or delaying an election after the commencement of an election, the affected county clerk shall ensure that the public receives immediate notification of the suspension of the election and the date of the rescheduled election by any means possible, including all electronic media available and notice in accordance with KRS Chapter 424.

(2) Suspend general voting. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county board of elections shall immediately:
(a) Suspend general voting being conducted on all voting systems;
(b) Instruct the precinct election officers to secure all voting machines being used for general voting until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k);
(c) Instruct the precinct election officers to not closeout or tally the votes in the voting machines. The precinct election officers shall ensure that all seals on the voting machines are intact prior to storage in a secure location;
(d) Instruct the precinct election officers to record the public counter number on the form furnished by the county board of elections and the form shall be signed by all present precinct election officers; and
(e) Instruct the precinct election officers to return all election materials to the county board of elections.

(3) Ballots and election materials. After notification from the State Board of Elections of an executive order suspending or delaying an election, an affected county clerk shall immediately deliver all election materials, including unvoted absentee ballots, paper ballots, provisional ballots, precinct signature rosters, and related materials, in a secured and locked storage container or area until voting may be resumed in accordance with the executive order issued pursuant to KRS 39A.100(1)(k).

(4) Conduct of rescheduled election. (a) If the precinct signature roster and voting machines are intact from the original election date, then only those persons duly registered to vote upon the original election date who did not vote on that date shall be entitled to vote on the additional day of voting in that precinct. (b) If the precinct signature rosters or the voting machines are not intact from the original election date, then any person duly registered to vote upon the original election date, regardless of whether that person voted on the original election date, shall be entitled to vote on the additional day of voting in that precinct. If the signature rosters are destroyed or incomplete and the voting machines are intact, the county board of elections shall use a new set of precinct signature rosters provided by the State Board of Elections, clear the voting machines of all votes, and reset the machines for use in the rescheduled election.

(c) Voting on the rescheduled election day shall be accomplished by physically appearing at the voting place. The time set by law for casting or canvassing a military, absentee, or special presidential ballots shall not be extended by the executive order rescheduling the election. Any absentee, military, or special presidential ballot duly received on the original election date shall be valid.

Section 8. Release and Certification of Election Returns. (1) If a statewide election is affected by the suspension or delay of an election in an affected election district pursuant to KRS 39A.100(1)(k):

(a) County boards of elections not located in the affected election district that have races affected by the suspension or delay of an election in an affected election district shall

1. Withhold returns for affected races until the county boards of elections in those counties where an election has been suspended or delayed have conducted rescheduled elections and are able to certify returns to the Secretary of State;
2. Not release any vote totals for the affected races until the suspended election has been completed in the affected counties;
3. Instruct the precinct election officers to not closeout or tally the votes in the voting machines;
4. Instruct the precinct election officers to remove the memory device that stores the vote totals on each voting machine, to secure and seal each voting machine, and to not post the vote totals of the affected races at the precinct as required by KRS 117.285. The precinct election officers shall immediately return all election materials to the county board of elections; and
5. Tally the vote totals from each precinct and only post at the county clerk's office the vote totals for those races not affected by the suspension or delay pursuant to KRS 39A.100(1)(k).

(b) The State Board of Elections shall notify the county boards of elections not located in the affected election district that have races affected by the suspension or delay of an election in an affected election district when vote totals are to be delayed and when vote totals shall be certified to the Secretary of State.

(2) If a county election, or any part of a county election, is suspended, the vote totals from an affected race shall not be released by the affected county board of elections until after the polls have closed in those jurisdictions with delayed elections.

Section 9. Post-Election Deadlines. All post-election timeframes and deadlines not specifically addressed in the provisions of this administrative regulation that are enumerated in general election statutes shall be suspended until the rescheduled election occurs, in accordance with the Governor's executive order, pursuant to KRS 39A.100(1)(k).


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TREY GRAYSON, Chair
APPROVED BY AGENCY: November 29, 2005
FILED WITH LRC: December 12, 2005 at noon
CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4369.

STATE BOARD OF ELECTIONS
(As Amended at ARRS, February 13, 2006)
31 KAR 8:020. Provisional voting.

RELATES TO: KRS 117.015(1), 117.275, 117.305 [117.304], 42 U.S.C. 15482
STATUTORY AUTHORITY: KRS 117.015(1), 42 U.S.C. 15482, sec. 302(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.015(1) authorizes the Kentucky State Board of Elections to promulgate administrative regulations necessary to property carry out its duties in the administration of the election laws. The Help America Vote Act of 2002, 42 U.S.C. 15482, Section 302(c) requires the state to comply with the provisions of that section concerning [establishes requirements for] provisional voting in elections for federal offices. This administrative regulation establishes procedures for provisional voting [in compliance with federal law).

Section 1. Definitions. (1) "Provisional ballot" means a ballot cast in an election for federal office by an individual who resides in a voting precinct but whose eligibility to vote is in question or is not determinable on election day.
(2) "Provisional ballot inner envelope" means the envelope with the words "provisional ballot" printed on the front.
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(3) "Provisional ballot outer envelope" means the envelope with the following printed on the front:
(a) Precinct election officer checklist of circumstances for issuing a provisional ballot;
(b) Provisional ballot affirmation; and
(c) The county board of elections checklist for indicating whether the ballot was counted and if not counted the reason why.

Section 2. Applicability. This administrative regulation shall be applicable to special, primary, and general elections for the federal, state, and local elections of President/Vice President, United States Senator, and United States House of Representatives.

Section 3. Precinct Election Officer Notice. (1) A precinct election officer who cannot confirm a potential voter's eligibility to vote on election day shall notify the individual of the option of appearing before the county board of elections to dispute eligibility or voting a provisional ballot in that precinct if the individual resides [they reside] at a residence within the geographical boundaries of the precinct.
(2) If the individual chooses to cast a provisional ballot, then the individual [they] shall not be eligible to vote in any other manner.

Section 4. Procedures and Circumstances for Casting a Provisional Ballot. (1) The individual shall sign a provisional ballot precinct signature roster, SBE 39 [prescribed by the State Board of Elections], which contains the individual's Social Security number, name, address, signature, date of birth, political party affiliation, identification type, and precinct officer initials.
(2) The precinct election officer shall check the appropriate box next to the circumstance for issuing the provisional ballot.
(3) The circumstances for issuing the provisional ballot:
(a) Voter whose name does not appear on the precinct roster and whose registration status cannot be determined by the precinct officer;
(b) Voter whose name does not appear on the precinct roster and who has been verified as ineligible to vote;
(c) Voter who does not have identification;
(d) Voter who is voting as a result of a federal or state court order or any order under state law in effect ten (10) days prior to election day which extends polling hours; or
(e) Voter has been challenged by all four (4) precinct election officers.
(4) The precinct election officer shall give the individual the provisional ballot, a provisional ballot inner envelope, SBE 39, and the provisional ballot outer envelope, SBE 38.
(5) To cast a provisional ballot, an individual shall execute the written affirmation on the provisional ballot outer envelope before a precinct officer at the voting [polling] place declaring the individual [they are] a registered voter in the county and resides [reside] within the geographical boundaries of the precinct. The written affirmation executed by the individual shall state:
(a) The individual's [their] name;
(b) Current residential address;
(c) Political party affiliation;
(d) That the individual [they are] a registered voter in the county and resides [reside] in the precinct;
(e) That the individual knows [they knew] of no legal reason to prevent [his or her] [their] vote from being cast and counted;
(f) That the individual has not voted and shall not vote in another precinct or by absentee ballot in this state during this election;
(g) That the individual understands that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefore; and
(h) That the individual further understands that if [her or she] executes [they execute] the affirmation and is [are] not a registered voter at the current address stated, the individual has [they have] committed a criminal act.
(6) The precinct election officer shall direct the individual to a private voting area in which the individual [they] shall cast his or her [their] provisional ballot.
(7)(a) An individual may spoil up to two (2) provisional ballots

and shall not be issued more than a total of three (3) provisional ballots.
(b) Spoiled ballots shall be placed in the provisional ballot inner envelope, sealed by the individual, and returned to a precinct election officer who shall mark on the provisional ballot stub of the issued ballot and on the front of the envelope "spoiled ballot".
(8) The individual shall place the voted provisional ballot in the provisional ballot inner envelope and seal. The individual shall place the sealed provisional ballot inner envelope in the provisional ballot outer envelope and seal.
(9) The individual shall return the sealed provisional ballot outer envelope to the precinct election officer.
(10) The precinct election officer, upon receiving the sealed provisional ballot outer envelope from the individual, shall give the individual the provisional ballot information sheet, SBE 38 [prescribed by the State Board of Elections], which explains the individual's right to contact their local county clerk to learn if the provisional ballot was counted, and if not counted, the reason why.
(11) A precinct election officer shall place sealed provisional ballot outer envelopes and sealed spoiled provisional ballot inner envelopes in a container and transmit to the county board of elections.
(12) The county board of elections shall determine the eligibility to vote of each individual casting a provisional ballot, in accordance with KRS Chapters 116 to 118 and 31 KAR Chapters 2 to 6.
(13) If the county board of elections determines the individual is eligible to vote in the precinct in the election, the vote shall be counted, and the county board shall so indicate on the provisional ballot outer envelope.
(14) If the county board of elections determines the individual is ineligible to vote in the precinct in the election, the vote shall not be counted and the county board shall so indicate on the provisional ballot outer envelope.

Section 5. Provisional Ballot During Extension of Time to Close Polls. (1) An individual who votes in an election for federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten (10) days before the date of that election may only vote in that election by casting a provisional ballot.
(2) A provisional ballot cast during an extension of the time for closing the polls required by orders described in this section shall be separated and held apart from other provisional ballots cast by those not affected by the order.

Section 6. Responsibilities. (1) The county board of elections shall count all eligible provisional ballots.
(2) The county board of elections shall begin counting provisional ballots no later than 9 a.m. prevailing time on the day following the election.
(3) The provisional ballot count shall be certified by the county board of elections on the Certification Official Count and Record of Election Totals prescribed by the State Board of Elections in 31 KAR 4:070, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. This form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections this form shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the day following the election.
(4) Upon completion of a recanvass of vote totals, the county board of elections shall report recanvassed vote totals on the Recanvass of Official Count and Record of Election Totals form, prescribed by the State Board of Election in 31 KAR 4:070, which contains the office name, name of candidate, machine vote totals, absentee machine vote totals, paper absentee ballot vote totals, provisional ballot vote totals, and total votes. The recanvassed vote totals shall be certified and immediately reported to the Secretary of State's Office.
(5) County clerks shall cause provisional ballots to be printed. The provisional ballots shall be printed with a ballot stub that will be consecutively numbered with a place for voter name, precinct election officer initials, and marked by precinct officers if it was a
spilled ballot.
(6) County clerks shall post instructions in each precinct on how to cast a provisional ballot, in accordance with Section 4 of this administrative regulation.
(7)(a) For general and special elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent to each precinct.
(b) For primary elections, a minimum of twenty (20) provisional ballots and other applicable forms shall be sent for each party to each precinct.
(8) After the county board of elections has completed its investigation of each provisional ballot and marked the face of the provisional ballot outer envelope appropriate to its [false] findings, the county clerk shall photocopy the face of each outer envelope for future access to convert the individual whether or not the ballot was counted, and if not counted, the reason why, and shall immediately enter the information in the statewide voter registration database.
(9) Provisional ballots and all envelopes from a general election shall be locked for thirty (30) days and retained for twenty-two (22) months. Provisional ballot and all envelopes from a primary or special election shall be locked for ten (10) days and retained for twenty-two (22) months.
(10) A provisional ballot accountability statement for provisional ballots, SBE 37, [presented by the State Board of Elections] shall be sent to each precinct and returned to the county board of elections, which contains the county name, precinct name, number of ballots issued, ballot stub numbers, number of provisional ballots used, number of provisional ballots unused, number of provisional ballots spoiled and place and signature of all four (4) precinct election officers.
(11) The chairman of the county board of elections shall file a completed "County Board of Elections Provisional Ballots Issued to Voters and Counted form, SBE 54C, with the State Board of Elections within ten (10) days after any special, primary, or general election for the federal elective offices of President/Vice President, United States Senator, and United States House of Representatives.
[(11) County boards of election shall instruct precinct election officers as to who is eligible to vote a provisional ballot and the proper procedures, in accordance with Section 4 of this administrative regulation.]

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) *Provisional Ballot Precinct Signature Roster - SBE 35* [204];
(b) *Provisional Ballot Informational Sheet - SBE 36* [204](11/03);
(c) *Provisional Ballot Accountability Sheet - SBE 37* [12/05]/[11/03];
(d) *Provisional Ballot Outer Envelope - SBE 38* [204];
(e) *Provisional Ballot Inner Envelope - SBE 39* [11/03]; and
(f) *County Board of Elections Provisional Ballots Issued to Voters and Counted - SBE 54C* [204]. [Certification Officer and Record of Election Totals - SBE 49 (11/03) and Reserves of Official Count and Record of Election Totals - SBE 49A (11/03)].
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TREY GRAYSON, Chair
APPROVED BY AGENCY: November 29, 2005
FILED WITH LRC: December 12, 2005 at noon
CONTACT PERSON: Kathryn H. Dunnigan, General Counsel, Kentucky State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-7100, fax (502) 573-4969.

GENERAL GOVERNMENT CABINET
Board of Nursing
(As Amended at ARRS, February 14, 2006)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.142(1)(b), 314.161

STATUTORY AUTHORITY: KRS 61.874(3), 314.041(8), (10)(d), 314.042(3), (6) 314.051(2), (10)(d), 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(8), (10)(d), 314.042(3), (6), 314.051(2), (10)(d), 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure, registration, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure or Registration Applications. (1) The board shall collect a fee for:
(a) An application for licensure - $150
(b) An application for registration - $150
(c) Licensure renewal or reinstatement - $150
(2) The fee for an application shall be:
(a) Licensure by endorsement as a registered nurse - $150
(b) Licensure by endorsement as a licensed practical nurse - $150
(c) Licensure by examination as a registered nurse - $110
(d) Licensure by examination as a licensed practical nurse - $110
(e) Renewal of license - forty (40) dollars.
(f) Retired status - twenty-five (25) dollars.
(g) Reinstatement of license - $120.
(h) Paper copy of a renewal application - forty (40) dollars [Inactive to active license status—ninety-five (95) dollars];
(i) Full verification of licensure, credential or registration history - fifty (50) dollars.
(j) Duplicate license or registration card or letter - thirty-five (35) dollars.
(k) Registration as an advanced registered nurse practitioner - $150
(l) Renewal of registration as an advanced registered nurse practitioner - forty (40) dollars.
(m) Reinstatement of registration as an advanced registered nurse practitioner - $120.
(n) Name change - thirty-five (35) dollars.
(o) Application to establish a prelicensure program of nursing - $2,000.

(3) An application shall not be evaluated unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education or for a renewal or reinstatement of the approval shall be:
(1) Ballot provider approval - $400.
(2) Reinstatement of provider approval - $400.
(3) Biennial Renewal of approval - $200
(4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:
(a) Validation of the current status of a temporary work permit, provisional license, license, registration, or credential:
1. If requested in writing in individual nurse format - fifty (50) [ten (10)] dollars; 2. If requested in writing in list format - fifty (50) [ten (10)] dol-
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[3-If obtained from the board web-site, one (1)-dollar per name]
(b) Copy of an examination result or transcript - twenty-five (25) dollars.
(c) Nursing certificate (optional) - thirty (30) dollars.
(d) Duplicate renewal application form due to failure to maintain current mailing address - twenty-five (25) dollars.

(2) An applicant for licensure who takes or retakes the licensure examination shall pay:
(a) The current examination fee required by the national council of state boards of nursing; and
(b) Application for licensure pursuant to Section 1 of this administrative regulation.

(3) A graduate of a foreign school of nursing shall be responsible for:
(a) Costs incurred to submit credentials translated into English;
(b) Immigration documents; and
(c) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

Section 4. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:
(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office; and
(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office.

(3) For all other applications, except for renewal of license applications, within one (1) year from the date the application form is filed with the board office.

Section 5. An applicant who meets all requirements for approval, licensure, credential or registration shall be issued the appropriate approval, license, credential or registration without additional fee.

Section 6. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be $120.
(2) The credential renewal fee shall be thirty-five (35) dollars [fifty-five (55)]
(3) The credential reinstatement fee shall be $120.

Section 7. A payment for an application fee that is in an incorrect amount shall be returned and the application shall not be processed until the correct fee is received.

Section 8. Returned Check Fee. A check submitted to the board for payment of a fee which is returned by the bank for non-payment shall be assessed a returned check fee of thirty-five (35) [twenty-five (25)] dollars.

JIMMY T. ISENBERG, President
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 12, 2005 at 11 a.m.
CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3338, email nathan.goldman@ky.gov

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, February 13, 2006)

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

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

Section 1. Incorporation by Reference. (1) "Probation and Parole Policies and Procedures, February 13, 2006 [December 14, 2005] [April 4, 2006]" are incorporated by reference. Probation and Parole Policies and Procedures include:
27-01-01 Probation and Parole Procedures (Added 1/12/05)
27-02-01 Duties of Probation and Parole Officers (Added 1/12/05)
27-02-02 Probation and Parole Officers Telecommuting Program (Added 1/12/05)
27-02-03 Administrative Duties and Chain of Command (Added 1/12/05)
27-03-01 Workload Formula (Added 1/12/05)
27-04-01 Data Collection and Internal Research (Added 1/12/05)
27-05-01 Testimony, Court Demeanor and Availability of Legal Services (Added 1/12/05)
27-06-02 Equal Access to Services (Added 1/12/05)
27-07-01 Cooperation with Law Enforcement Agencies (Added 1/12/05)
27-08-01 Use of Force (Added 4/12/05)
27-09-01 Kentucky Community Resources Directory (Added 1/12/05)
27-10-01 Preliminary Diversion (Amended 4/12/05)
27-11-01 Citizen Complaints (Amended 2/13/06 [Added 12/14/05])
27-12-01 Supervision: Case Classification (Added 1/12/05)
27-12-02 Risk Scale Assessment (Amended 4/12/05)
27-12-03 Initial Interview (Added 1/12/05)
27-12-04 Conditions of Supervision Document and Request for Modification (Added 1/12/05)
27-12-05 Release's Report Document (Added 1/12/05)
27-12-06 Grievance Procedures for Offenders (Added 1/12/05)
27-12-08 Supervision Planning (Amended 4/12/05)
27-12-11 Guidelines for Monitoring Financial Obligations (Amended 4/12/05)
27-12-13 Community Service Work (Added 1/12/05)
27-12-14 Offender Travel (Amended 4/12/05)
27-13-01 Drug and Alcohol Testing of Offenders (Amended 4/12/05)
27-14-01 Interstate Compact (Amended 4/12/05)
27-15-01 Supervision Reporting Documents, Violations and Unusual Incidents (Added 1/12/05)
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence (Amended 4/12/05)
27-17-01 Absconder Procedures (Amended 4/12/05)
27-18-01 Probation and Parole Issuance of Detainer or Warrant (Amended 4/12/05)
27-19-01 Preliminary Revocation Hearing (Amended 4/12/05)
27-20-02 Prisoner Intake Notification (Added 1/12/05)
27-20-03 Prisoner Status Change (Added 1/12/05)
27-21-01 Apprehension of Probation and Parole Offenders (Amended 4/12/05)
27-23-01 In-state Transfer (Added 1/12/05)
27-24-01 Releasing Offender from Active Supervision (Added 1/12/05)
27-24-02 Reinstatement of Offenders to Active Supervision (Added 1/12/05)
27-26-01 Assistance to Former Offenders and Dischargees (Amended 2/13/06 [12/14/05] [4/12/06])
27-30-01 Offender Registration (Amended 2/13/06 [12/14/05] [4/12/06])
27-30-02 Conditional Discharge of Sex Offenders (Added 12/14/05)
JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARR's, February 13, 2006)

501 KAR 8:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or 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, 2/13/06 (December 14, 2005) [June 14, 2006]," as incorporated by reference. Secured Policies and Procedures include:

<table>
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<th>Code</th>
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<td>BCC 09-04-02</td>
<td>Immediate Release of Inmates from Locked Areas (Amended 1/12/05)</td>
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<td>Construction Crew Entry, Exit and Regulations (Amended 1/12/05)</td>
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704 KAR 3:480. Reading diagnostic and intervention grants [Early reading-incentive grants].
RELATES TO: KRS 158.707(2)(C) and (D), 158.792, 158.794
STATUTORY AUTHORITY: KRS 156.070(4), 158.792(3), and 158.794(3)
NECESSITY, FUNCTION, and CONFORMITY: KRS 156.160 authorizes the Kentucky Board of Education to promulgate [adopt] administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance. KRS 158.792(3) requires the board to promulgate administrative regulations to establish an application process and the criteria for funding reading diagnostic and intervention grants from the [Read to Be Act] of 2001 [Early Reading-Incentive Grant Program], established in KRS 158.792. This administrative regulation establishes the application process and selection criteria.

Section 1. Definitions. (1) "Model" means an instructional approach which:
(a) is based on reliable, replicable research;
(b) includes a balance of instructional strategies that support the attainment of reading and phonics skills contained in 704 KAR 3:4803, The Kentucky Program of Studies, and
(c) includes skills that lead to reading success.
(2) "Qualified instructor" means a student who:
(a) is enrolled in public school;
(b) is in the primary program as defined under KRS 158.034; and
(c)
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Section 2. Purpose of Program. A grant provided through the Early Reading Incentive Grant Program shall:
(1) Be used to supplement a school's program, individually or in partnership with another entity, and
(2) Not be used to supplant funding for existing instructional activities.

Section 3. Selection of Grants. (1) A public school that enrolls primary students, including the Kentucky School for the Blind and the Kentucky School for the Deaf, shall be eligible to apply for a grant.
(2) A school council or, if none exists, a school, may apply for a grant individually or jointly with another school.
(3) A grant application shall only be advanced by a school.
(4) A grant application shall not override an individual school council's policy-making authority over instructional practices to meet identified reading needs pursuant to KRS 185.972. [An added provision regarding the use of grant funds was added here.]
(5) A grant application shall be based on selection of a reading diagnostic and reading intervention program as established in KRS 158.792 (1)(b) and (c) [a model] that meets identified reading needs.
(6) A grant application shall indicate the fiscal agent as a local board of education or other entity eligible to enter into a memorandum of agreement to receive state education funds. The fiscal agent for the Kentucky Schools for the Blind or Deaf shall be the Kentucky Department of Education.
(7) Funds shall be made available to an eligible applicant through a Request for Application (RFA) [Repeal - RFP? process]. The contents of each RFA [RFP] shall be subject to approval by the Reading Diagnostic and Intervention [Early Reading Incentive] Grant Steering Committee.
(8) To be eligible for funding, an application shall:
(a) Include the contents required by KRS 158.792(3)(b)(e) through (h); and
(b) Specify the matching funds that will be allocated to directly support the implementation of the reading diagnostic and intervention program [model], as required by KRS 158.792(4).
(9) A grant application shall be subject to approval by the principal and superintendent to ensure that the grant application includes adequate resources to implement the reading diagnostic and intervention program [model]. The use of categorical funds for matching funds shall be subject to approval by the local board of education.
(10) Matching funds shall include funds allocated by or under the discretion of the school council, or if none exists, by the local board of education.
(11) Matching funds may be identified from other state, federal, local or nonpublic sources, within the uses and conditions set forth by the source of those funds.
(12) The criteria for selection of applications for funding shall include the following:
(a) Identification of literacy needs to include a description of the comprehensive reading model that is currently in place at the school and the compelling need for the reading diagnostic and intervention grant [Effectiveness of the school process for identifying needs and qualified students];
(b) Identification of the research-based reading diagnostic and intervention program as established in KRS 158.792 to be funded through the grant [Extent and level of need];
(c) Professional Development Plan describing a plan for building capacity within the school through professional development specific to reading diagnostics and intervention [Effectiveness of the model in meeting the needs identified];
(d) Description of the plan for implementing the reading diagnostic and intervention program;
(e) Assessment and evaluation plan describing how the school will evaluate the continuous progress of students involved in the intervention program; and
(f) Budget and budget narrative to describe the fiscal resources needed for the program, any matching funds or cash contributions used to support the program, and a detailed explanation of how the funds will be used.
(g) Level of commitment;
(h) Capacity to implement the model;
(i) Quality of the plan to evaluate results; and
(j) Efficiency and effectiveness of the budget, including use of proposal grant funds and matching funds.
(13) [After consideration of the criteria established in subsection (12) of this section, geographic distribution may be considered.
(14) The Department of Education shall make available materials to assist a school in the preparation of a grant application.
(15) Independent evaluators shall review the applications. The Reading Diagnostic and Intervention Grant Steering Committee shall make recommendations for funding based upon the results of the review. The independent evaluators shall have:
(a) Knowledge of reading research and [b] An application shall be reviewed as follows:
(a) A panel shall review the application and make a recommendation to the Early Reading Incentive Grant Steering Committee. The panel shall include:
(b) Persons knowledgeable of 704 KAR 3.303, the Reading Program of Studies [early reading incentive]; and
(c) Understanding and experience in early instruction, including a comprehensive reading program as described in KRS 158.792(1)(a).
(16) At least one (1) person who is currently teaching primary students.
(17) Upon receipt of the panel's recommendation, the Early Reading Incentive Grant Steering Committee shall make the final recommendation to the Department of Education.

Section 2. [4.] Grant Allocations and Requirements. (1) The award size or range of grants shall be determined by the Reading Diagnostic and Intervention [Early Reading Incentive] Grant Steering Committee. [The maximum time period for use of grant funds shall be twenty-seven (27) months.]
(2) In determining the amount of the grant award, the following shall be considered:
(a) The cost of proposed activities needed to implement the reading diagnostic and intervention program [model] selected, and
(b) The need for and amount of other funds to support activities related to the reading diagnostic and intervention program [model]; and
(c) The number of students being served.
(3) Grant funds shall be limited to direct costs required to implement the reading diagnostic and intervention program [model].
(4) Monitoring of awarded grants shall include at least the following:
(a) Fiscal reports submitted to the Department of Education;
(b) Program evaluation reports on the implementation of the reading diagnostic and intervention program [model]; and
(c) Documentation of the [model's] impact of the reading diagnostic and intervention program on the reading of qualified students served to include student progress on reading assessments.
(5) Prior to submitting each annual report to the Interim Joint Committee on Education as required by KRS 158.792(6), the Department of Education shall, in consultation with the Reading Diagnostic and Intervention [Early Reading Incentive] Grant Steering Committee, provide a written report to the Kentucky Board of Education regarding grant activities and the use of grant funds.

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

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairman
APPROVED BY AGENCY: December 12, 2005
FILED WITH LRC: December 12, 2005 at 4 p.m.
CONTACT PERSON: Kevin M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
EDUCATION CABINET
Department for Workforce Investment
Office of Career and Technical Education
(As Amended at ARRS, February 13, 2006)


RELATES TO: KRS 151B.035, 161.605
STATUTORY AUTHORITY: KRS 151B.035
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035 requires the Commissioner of the Department for Technical Education [State Board for Adult and Technical Education] to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035 which govern the pay plan for all certified and equivalent staff and unclassified staff in the Department for [Adult and Technical Education]. This administrative regulation establishes the compensation plan for employees of the Department for Technical Education [is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements].

Section 1. (1) Appointments. A new certified or equivalent employee [employees] or reentering certified or equivalent employee [employees] shall be appointed at the salary specified on the Minimum Salary Schedule for Certified and Equivalent Staff [salary structure for certified and equivalent employees] commensurate with education rank and experience. An employee in an administrative position may be provided an index adjustment commensurate with the scope of administrative or supervisory responsibility in addition to the base salary as specified for the particular job classification.

(2) A retired certified or equivalent employee returning to work in a position covered by the Kentucky Teachers' Retirement System shall not be placed on the salary schedule referenced in this section, but shall be paid pursuant to the requirements of KRS 181:805(1) and (2).

Section 2. Salary Adjustments. (1) Promotion.

(a) A certified or equivalent employee who is promoted shall receive a salary increase of [not less than] five (5) percent unless his current salary is beyond the minimum on the salary schedule. If the employee's salary is above the minimum, then the five (5) percent increase shall be at the discretion of the appointing authority.

(b) 1. A certified or equivalent employee promoted to an unclassified position in the Department for [Adult and] Technical Education shall receive a salary increase of [not less than] five (5) percent upon promotion unless his current salary is beyond the minimum. If the employee's salary is above the minimum, then the salary increase shall be at the discretion of the appointing authority, [not to exceed shall] 2. The employee's salary shall not be below the minimum rate of the higher classification following promotion.

3. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the commissioner may grant upon promotion a ten (10) percent to twenty (20) percent salary increase over the employee's previous salary. [Upon the successful completion of a one (1) year promotional probationary period, a certified or equivalent employee may receive at the discretion of the commissioner a five (5) percent promotional increase at the beginning of the month following completion of the probationary period.]

(2) Demotion.

(a) A certified or equivalent employee in the Department for [Adult and] Technical Education who is demoted shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion.

(b) An unclassified employee in the Department for [Adult and] Technical Education who is demoted to a certified or equivalent position shall have his salary adjusted to not more than sixty (60) percent above the proper cell. This salary shall not exceed ninety-five (95) percent of the salary which the employee was receiving prior to the demotion.

(3) Rank changes. A certified or equivalent employee shall have a salary adjustment retroactive to July 1 for educational rank changes which are confirmed by September 1 of each year.

(4) Other salary adjustments. (a) The Commissioner for [Adult and] Technical Education may authorize performance bonuses in lump sum payments for outstanding job performance for nonprobationary status employees in any fiscal year in which monies are available. [The criteria for such awards shall be approved by the State Board for Adult and Technical Education.]

(b) Educational achievement increases shall be honored for those employees who have earned educational achievement awards on file in the Division of Personnel Services as of July 1, 1990. This provision shall expire when previous commitments have been met.

Section 3. Salary Advancements. (1) The Minimum Salary Schedule for Certified and Equivalent Staff [salary structure for certified and equivalent employees] shall be adjusted by September 30 of each year. All certified and equivalent staff shall receive a salary increase not less than the percentage increase provided to other state employees. This increase shall be provided July 1. Salary adjustments for those entitled employees shall be retroactive to July 1 of each year once the salary schedule is confirmed by September 30 of each year.

(2) Annual salary increments for unclassified employees shall occur commensurate with each person's established increment date.

Section 4. Paid Overtime. If [When] applicable, certified and equivalent employees and unclassified employees shall be awarded overtime payments in accordance with the Fair Labor Standards Act, 29 US sec. 201 et seq.

Section 5. Incorporation by Reference. (1) "The Minimum Salary Schedule for Certified and Equivalent Staff", July 1, 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workforce Investment, Office of Career and Technical Education, Division of Human Resources, 500 Metro, Second Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMIL S. JEZIK, Executive Director
APPROVED BY AGENCY: October 14, 2005
FILED WITH LRC: October 14, 2005 at 10 a.m.
CONTACT PERSON: Helen Burchfield, Administrative Assistant, Department of Workforce Investment, Office of Career and Technical Education, 500 Metro, 20th Floor, Capital Plaza Tower, phone (502) 564-4286, fax (502) 564-224.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(As Amended at ARRS, February 13, 2006)

808 KAR 9:070. Examinations.

RELATES TO: KRS 304.9-105, 304.9-160, 304.9-190, 304.9-230, 304.9-320, 304.9-430, 304.15-700
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-160(1), 304.9-230(2), 304.15-700(2)(a), 304.15-720 [68]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(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 in KRS 304.1-010. KRS 304.9-160(1) requires the executive director to promulgate administrative regulations developing and conducting [provides that] examinations required by Subtitle 9 of the Kentucky Insurance Code shall be developed and conducted in accordance with administrative regulations promulgated by the executive director [commerce-
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Section 1. Definitions. (1) "Examination" means a written examination required to license an applicant in accordance with KRS Chapter 304 for an adjuster, agent, consultant, or viatical settlement broker license.

(2) "Executive Director" means the Executive Director of the Office of Insurance.

(3) "License" is defined by KRS 304.1-110(2), [as a document issued by the executive director [commissioner] indicating that an applicant for an adjuster, agent, consultant, or viatical settlement broker license has complied with applicable requirements of KRS Chapter 304].

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

Section 2. A completed written application for the examination and documentation demonstrating successful completion of any required prelicensing training shall be filed with the executive director [commissioner] by, or on behalf of, the applicant, prior to the date scheduled for the examination. The application shall be accompanied by fees specified in KRS 304.4-010 or 806 KAR 4:010.

Section 3. Every applicant for a license who is required to take a written examination shall answer correctly seventy (70) percent of the questions to successfully pass the examination.

Section 4. An applicant who takes an examination required by KRS Chapter 304 shall be permitted to take or retake an examination a total of three (3) times within 120 days of the receipt of an application by the executive director [commissioner]. Applicable fees, as set out in KRS 304.4-010 and 806 KAR 4:010, Section 11(13), [as administrative regulations promulgated thereunder], shall be submitted with the request to retake the examination. The request shall be made on an "Examination Retake Form", [inhabited by reference (preprinted) in 806 KAR 9.340, [inhabited by reference].]

Section 5. An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete examinations as follows:

(1) For life line of authority, a life examination;
(2) For health line of authority, a health examination;
(3) For property line of authority, a property examination;
(4) For casualty line of authority, a casualty examination;
(5) For personal lines, a property and casualty personal lines examination;
(6) For a line of authority identified in accordance with KRS 304.9-030(2)(n), an examination appropriate for the kind of insurance; and
(7) For variable life and variable annuity products, no examination is required.

Section 6. (1) The provisions of this administrative regulation shall apply to every individual resident applicant for a limited line of authority identified in KRS 304.9-230(1).

(2) An individual applying for limited lines of authority as identified in KRS 304.9-230 shall successfully complete examinations as follows:

(a) For surety limited line of authority, a surety examination;
(b) For travel limited line of authority, a travel examination;
(c) For crop [field] limited line of authority, a crop [field] examination; and
(d) For limited credits limited line of authority, no examination is required.

Section 7. An individual applying for a viatical settlement broker license shall successfully complete a viatical settlement examination unless exempt from examination pursuant to KRS 304.15-700(2)(b). The examination shall be given by the executive director [commissioner] in accordance with provisions of an agreement the executive director [commissioner] executes with another state.

Section 8. (1) If an applicant who applies to take [takes] the examinations required by KRS Chapter 304 does not take an examination or fail to pass an examination within 120 days of the filing of his or her application, the application shall become invalid, unless the executive director [commissioner] grants an extension for good cause shown. The applicant may file a new application at any time following the expiration of the 120 day period, and an examination may be taken when scheduled by the Office [department] in the regular course of business.

(2) In determining good cause, the executive director shall consider whether the delay to take the examination or the failure to pass the examination within the time period specified in subsection (1) of this section was due to extenuating circumstances beyond the applicant's control.

Section 9. Examination results are valid for one (1) year from the date the examination is taken. Application for additional lines of authority or licenses issued as a result of the same examination shall be received by the executive director [commissioner] within the same one (1) year period. After this period, the applicant shall be retested.

LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: July 12, 2005
FILED WITH LRC: July 14, 2005 at 4 p.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-0868, fax (502) 564-1453.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Agent Licensing Division
(As Amended at ARR, February 13, 2006)


RELATES TO: KRS 304.9-230, 304.9-295, 304.15-700(3)
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-295(5),
(7), 304.15-729 (6) (6)-(9), 304.15-700(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(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 in KRS 304.1-010. KRS 304.9-295(6) and (7) (6) and (6) authorize the executive director [commissioner] to limit the number of continuing education hours carried forward to the subsequent biennium and to prescribe the form used to comply
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through training or experience, to instruct the continuing education course competently and shall be submitted on the "Instructor Approval Application" incorporated by reference, (as prescribed) in 806 KAR 9:340, and shall be accompanied by the "Filing Fee Submission Form" incorporated by reference, as (prescribed) in 806 KAR 9:340.

5. The number of participants and physical facilities shall be consistent with the teaching method specified; and

7. All courses shall include some means of evaluating quality.

(5) Continuing education credit shall not be provided for:

(a) Any course used to prepare for taking an examination required pursuant to KFS Chapter 304;

(b) Committee service of professional organizations;

(c) Computer training to develop functional skill [science courses—unies approved by the executive director] [commissioner];

(d) Motivational or sales training courses; and

(e) Any course not in accordance with section 2(4) of this administrative regulation.

(6) Any material change in a continuing education course shall be filed with and approved by the executive director [commissioner] prior to use. The material change shall not be approved until the filing fees are paid in accordance with subsection (3) of this section.

(7) Biennially, providers shall renew approval of continuing education courses and instructors [within the third subspecialty licensing term]. Providers shall file applicable information with and pay the applicable fee specified in 806 KAR 9:410 to the executive director [commissioner] prior to June 30 of the year numbered years immediately preceding the next continuing education biennium.

Section 3. Measurement of Credit. (1) Each credit hour of a continuing education course shall include at least fifty (50) minutes of continuous instruction for participation.

(2) A course shall not be credited for continuing education by a licensure more than once per continuing education biennium.

(3) Licensure shall be limited to a maximum of twelve (12) credit hours for self-study [correspondence] courses per continuing education biennium.

(4) A self-study [correspondence] course shall not be approved for continuing education credits of more than twelve (12) hours unless the course is identified by KRS 304.9-295(5) [(4)(6)]1 to 7 and 10.

Section 4. Reasons for Withdrawal. The executive director [commissioner] may withdraw approval of a continuing education course, provider, or instructor for any of the following reasons:

1. The course no longer meets the requirements of this jurisdiction or the course content no longer meets the requirements of KRS 304.9-295 or Sections 2 and 3 of this administrative regulation or the course has been materially changed without being filed with and approved by the executive director [commissioner], in accordance with Section 2 of this administrative regulation;

2. The continuing education course provider has certified to the executive director [commissioner] that a licensee has satisfactorily completed the course when, in fact, the licensee has not done so;

3. The continuing education course provider fails to certify to the executive director [commissioner] that a licensee has satisfactorily completed the course when, in fact, the licensee has done so; or

4. Unethical conduct of a provider [There is other good and just cause to withdraw approval of a continuing education course, provider, or instructor].

Section 5. Proof of Completion. (1) Within thirty (30) days of completion of a continuing education course, the provider shall certify to the executive director [commissioner] the names of all licensees who satisfactorily completed the continuing education course. The certification of completion required by this section for a classroom course shall be submitted on the "Continuing Education Course Attendance Roster" form, incorporated by reference (as prescribed) in 806 KAR 9:340. The certification of completion re-
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required by this section for a self-study [or correspondence] course shall be submitted on the "Approved" Continuing Education Certificate of Completion Form, Incorporated by reference [as presented] in 808 KAR 9:340, which the provider shall file with the executive director [commissioner] or shall forward to the licensee for signature and with instructions for the licensee to file with the executive director [commissioner]. In addition, the information may be submitted by the provider to the executive director through the Office of Insurance Web site, https://doi.ky.gov/kentucky/secure/Eservices/default.asp [commissioner] [in an electronic format prescribed by the executive director] [commissioner].

(2) The provider of the continuing education course shall furnish to the licensee attending the course a certificate and the licensee shall retain the certificate for at least three (3) years. The certificate required by this subsection shall be on the "Approved" Continuing Education Certificate of Completion Form, Incorporated by reference [as presented] in 808 KAR 9:340. The provider of the continuing education course shall retain a copy of the certificate for at least three (3) years. Providers of continuing education courses and licensees shall make available to the executive director [commissioner] or his or her designee copies of these certificates upon the request of the executive director [commissioner].

(3) Pursuant to KRS 304.9-295[2] and (9) [6]), each licensee shall be responsible for ensuring that his or her continuing education certificate of completion are timely filed with the office [department].

(4) At least six (6) hours of total credit earned per biennium shall be directly related to any one (1) or more of the lines of authority for which the agent is actively licensed. At least three (3) [two (20)] of total credit earned per biennium shall be in ethics. Hours may be classroom, self-study [correspondence], or a combination of both.

(5) Each self-study [correspondence] course shall require successful completion of a written examination or the submission of a statement by the licensee made under oath that the course was completed within the biennium.

(6) Licensees may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

Section 6. Cancellation and Reinstatement of Licenses. (1) If the office [department] does not receive proof of the fulfillment of a licensee's continuing education requirements for a resident licensee on or before July 30 in even-numbered years, and for a nonresident licensee or a nonresident viatical settlement broker licensee on or before sixty (60) days from the end of the continuing education biennium [July 30 in odd-numbered years], the executive director [commissioner] shall:

(a) Make information of the deficiency available to the licensee [on or before August 6]; and

(b) Terminate the license if proof of completion of the deficient hours on the "Continuing Education Course Attendance Roster" Form Incorporated by reference [as presented] in 808 KAR 9:340, or the "Approved" Continuing Education Certificate of Completion Form Incorporated by reference [as presented] in 808 KAR 9:340, is not received by the office [department] on or before the deadline [August 30].

(2) Within twelve (12) months after a license is terminated for failing to submit certificate of continuing education, the license may be reissued if the licensee satisfies the deficient continuing education requirements, submits a new application with required attachments for a license, and submits the applicable fees.

(3) If the continuing education delinquency remains unsatisfied for twelve (12) months or longer, the former licensee shall satisfy all of the licensing requirements specified in KRS Chapter 304, Subtitle 9.

Section 7. Affidavit for Exemption from Continuing Education. (1) Use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any other reason, including an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affidavit to suspension or revocation of the agent license.

(2) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may not appeal the continuation education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

(a) Completing the continuing education requirements for the immediate preceding continuing education biennium;

(b) Providing a certification of completion of those continuing education requirements; and

(c) Providing a signed, written statement withdrawing the affidavit.

Section 8. Limited lines of authority as identified in KRS 304.9-230 shall be exempt from all continuing education requirements.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form K-YF-01, "Provider Approval Application" (2/2003 edition);

(b) Form CEPL-100, "Course Approval Application" (2/2003 edition);

(c) Form K-YF-01, "Filing Fee Submission Form" (2/2003 edition);

(d) Form CEPL-200, "Instructor Approval Application" (2/2003 edition);

(e) Form CE-200, "Continuing Education Course Attendance Roster" (2/2003 edition); and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 216 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: October 10, 2005
FILED WITH LRRC: October 13, 2005 at 2 p.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone 502-564-0883, fax 502-564-1433.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(As Amended at AARRS, February 13, 2006)

806 KAR 15:050. Reporting and general requirements for viatical settlement providers and brokers.


STATUTORY AUTHORITY: KRS 304.15-715, 304.15-720

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.15-715 requires a request for verification of coverage to be made on a form approved by the executive director. KRS 304.15-720 authorizes the executive director [commissioner] to promulgate administrative regulations to implement KRS 304.15-700 to 304.15-720. This administrative regulation establishes the standards for viatical settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to viatical settlement contracts, viatical settlement providers, and viatical settlement brokers.

Section 1. Definitions. (1) "Executive director" is defined in KRS 304.1-050(1) means the Executive Director of the Office of
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Section 2. Viatlcal Settlement Contract and Form Approval. (1) A viatical settlement contract submitted to the executive director [commissioner] for approval shall:
(a) Provide space for identifying the parties;
(b) Provide space for including the amount of the proceeds payable to the vitor; and
(c) Provide that the contract is to be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.
(2) Each viatical settlement contract or other form submitted for approval shall:
(a) Be accompanied by the filing fee prescribed by 809 KAR 41:010 (KRS 304.14-410);
(b) Have a form number in the lower left corner;
(c) Meet the readability standards established by KRS 304.14-440; and
(d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type.
(3) The executive director [commissioner] may review any previously approved viatical settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.
(4) An order of the executive director [commissioner] disapproving a viatical settlement contract or other form shall state the grounds for disapproval.
(a) An order of the executive director [commissioner] withdrawing approval of a form, other than a viatical settlement contract, shall state the grounds for withdrawal. The withdrawal of a previously approved form, other than a viatical settlement contract, shall be effective at the expiration of a period at least thirty (30) days after the order is entered as the executive director [commissioner] shall prescribe in the order.

Section 3. General Rules. (1) A viatical settlement provider shall not unfairly discriminate in making viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, or marital or family status.
(2) A viatical settlement provider shall not unfairly discriminate between a vitor with a dependent and a vitor without a dependent.
(3) A viatical settlement provider shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.
(4) [The vitor shall have the right to rescind a viatical settlement contract in accordance with KRS 304.15-710 (4) and 304.15-715 (3) subject to repayment of all viatical settlement proceeds and any premiums, fees, and loan interest to the viatical settlement provider that was paid to or on behalf of the vitor.
(5) Pursuant to KRS 304.15-710(7), the viatical settlement funds shall be available to the vitor within two (2) business days after the viatical settlement provider has received the vitor's

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following payouts for insureds who are terminally or chronically ill:
(1) (a) If an insured's life expectancy is less than six (6) months, eighty (80) percent of the minimum percentage of the face value of the policy, less outstanding loans:
(2) (b) If an insured's life expectancy is at least six (6) months, but less than twelve (12) months, seventy (70) percent of the face value of the policy, less outstanding loans:
(3) (c) If an insured's life expectancy is at least twelve (12) months, but less than eighteen (18) months, sixty-five (65) percent of the face value of the policy, less outstanding loans:
(4) (d) If an insured's life expectancy is at least eighteen (18) months but less than twenty-five (25) months, sixty (60) percent of the face value of the policy, less outstanding loans; and
(5) (e) If an insured's life expectancy is twenty-five (25) months or more, an amount greater than the cash surrender value or accelerated death benefit in the policy.

Section 5. [4] Prohibited Practices. (1) Except for a subpoena issued by the executive director, if a viatical settlement provider or broker is served with a subpoena containing individual identification data, the viatical settlement provider or broker shall notify the viator and the insured within five (5) business days after receiving notice of the subpoena. Notice shall be sufficient if delivered to the last known address of the viator and the insured.

(2) A viatical settlement broker shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

Section 6. Insurance Company Practices. (1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a viatical settlement provider or a viatical settlement broker within thirty (30) calendar days of the date a request is received, subject to the following conditions:
(a) A current authorization consistent with applicable law, signed by the policy owner or certificate holder, accompanies the request; and
(b) If the coverage is an individual policy or group insurance coverage with details respecting the certificate holder's coverage [the case of an individual policy or group insurance coverage where details with respect to the certificate holder's coverage are] maintained by the insurer, submission of Form VOC, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form.

(2) A life insurance company shall [may] not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this section in excess of any usual and customary charges to contract holder, certificate holders or insureds for similar services.

(3) The life insurance company may send an acknowledgment of receipt of the request for verification of coverage to the policy owner or certificate holder and, if written, the policy owner or certificate holder may be entitled to see the policy. The acknowledgment may contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(4) A life insurance company shall not require the viator or insured to sign any request for change in a policy of a group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance policy, unless the policy owner or insured has ownership, assignment, or irrevocable beneficiary rights under the policy. In that situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate from the viatical settlement provider or an insured.

(5) The viatical settlement broker shall not perform any service for the viator or insured other than those services necessary to effectuate a viatical settlement.}

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Section 7. [5] Disclosure. (1) The viatical settlement broker shall provide a copy of the viatical settlement disclosure Form VS 007 and the "Kentucky Consumer Guide to Understanding Viatical Life Insurance" to the viator on or before the date that the viatical settlement broker offers or advertises the availability of the viator's life insurance policy, introduces the viator to a viatical settlement provider, or offers or attempts to negotiate a viatical settlement between a viator and a viatical settlement provider. The viatical settlement broker shall deliver the original, executed Form VS 007 to the viatical settlement provider that purchases the life insurance policy on or before the date that the viatical settlement contract is signed by each party to the contract.

(2) If there is no viatical settlement broker involved in the viatical settlement transaction, the viatical settlement provider shall provide the viatical settlement disclosure Form VS 007 and the "Kentucky Consumer Guide to Understanding Viatical Life Insurance" to the viator on or before the date that the viatical settlement contract is signed by each party to the contract.

(3) The disclosure form required by subsections (1) and (2) of this section shall be signed and dated by the viator, by an authorized representative of the viatical settlement provider, and by the viatical settlement broker, if any.

Section 8. [6] Advertising for Viatical Settlements. (1) This section shall apply to advertising of viatical settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A viatical settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. Advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee and the individual who created or presented the advertisement. A system of control shall include routine notification, at least once a year, to persons authorized by the viatical settlement licensee to disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

(3) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the executive director [commissioner] from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(4) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(5) The following rules shall govern the advertisement of viatical settlements:
(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss, tax, premium, payable, or federal tax consequence. Making the viatical settlement contract available for inspection prior to consummation of the sale, or offering to refund the payment if the viator is not satisfied, or including in the viatical settlement contract a "free look" period that satisfies or exceeds legal requirements, shall not remedy misleading statements.

(b) An advertisement shall not use the name or title of a life insurance or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a loan is unfair, exorbitant, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "additional cost," "net extra cost," or words of similar import shall not be used with respect to a benefit or service unless true. An advertise-
ment may specify the charge for a benefit or a service, may state that a charge is included in the payment, or may use other similar language.

(e) When a testimonial, appraisal, or analysis is used in an advertisement, the testimonial, appraisal, or analysis shall:
1. Be genuine;
2. Represent the current opinion of the author;
3. Be applicable to the viatical settlement contract product or service advertised; and
4. Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective vitors as to the nature or scope of the testimonial, appraisal, analysis or endorsement;
5. Prominently disclose in the advertisement if the individual making the testimonial, appraisal, analysis, or endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit other than required uniform scale wages; and
6. Not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between the organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(f) In using testimonials, appraisals, or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(g) If an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period not less than five (5) years after its use.

(h) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(i) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, insurance producers, policies, services, or methods of marketing.

(j) The name of the viatical settlement licensee shall be identified in all advertisements about the licensee or its viatical settlement contracts, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

(k) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device, or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee has any responsibility for the financial obligation under a viatical settlement contract.

(l) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective vitors into believing that the solicitation is in some manner connected with a government program or agency.

(m) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that compelling viatical settlement licensees may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the Office [department] of Insurance to find out if Kentucky requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

(n) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by a government entity.

(o) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, group designation, name of an affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have responsibility for the financial obligation of the licensee.

(p) An advertisement shall not create the impression that a division or agency of the state or of the U.S. government endorses, approves or favors:

1. A viatical settlement licensee or its business practices or methods of operation;
2. The merits, desirability, or advisability of a viatical settlement contract;
3. A viatical settlement contract; or
4. A life insurance policy or life insurer.

(q) If the advertiser emphasizes the speed with which the viatical settlement contributor will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(r) If the advertising emphasizes the dollar amounts available to vitors, the advertising shall disclose the average purchase price as a percent of face value obtained by vitors contracting with the licensee during the past six (6) months.

Section 9. [74] Reporting Requirement. (1) On or before March 1 of each calendar year, the licensed viatical settlement provider shall submit the following related to the licensee’s activities for the previous calendar year:

(a) A report of the viatical settlement transactions related to Kentucky insures, which shall be submitted on Form VS 001;
(b) A report of the individual mortality of Kentucky insures, which shall be submitted on Form VS 002;
(c) A report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VS 003; and
(d) A certification of the information contained in the reports, which shall be submitted on Form VS 006 and shall be filed with the reports.

(2) On or before March 1 of each calendar year, the licensed viatical settlement broker shall submit the following related to the licensee’s activities for the previous calendar year:

(a) A report of the viatical settlement transactions related to Kentucky insures, which shall be submitted on Form VS 004;
(b) A report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VS 005; and
(c) A certification of the information contained in the reports, which shall be submitted on Form VS 006 and shall be filed with the reports.

Section 10. [84] Incorporation by Reference. (1) The following material is incorporated by reference:

(b) Form VS 001, "Viatical Settlement Provider Report - Kentucky Insures Only" (4/2001 edition);
(c) Form VS 002, "Individual Mortality Report - Kentucky Insures Only" (4/2001 edition);
(d) Form VS 003, "Viatical Settlement Provider Report - All States and Territories" (4/2001 edition);
(e) Form VS 004, "Viatical Settlement Broker Report - Kentucky Insures Only" (4/2001 edition);
(f) Form VS 005, "Viatical Settlement Broker Report - All States and Territories" (4/2001 edition);
(g) Form VS 006, "Viatical Settlement Provider/Broker Certification Form" (6/2005 [4/2004] edition); and
(h) Form VS 007, "The Kentucky Viatical Settlement Disclosure Form - Notice Regarding Viatical Settlement Contracts" (6/2005 [4/2004] edition); and
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(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Department of Insurance, 215 West Main Street, Post Office Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be obtained on the Office of Insurance Internet Web site at http://doi.ppr.ky.gov.

JOHN W. CLAY, Deputy Secretary
For LAJUANA S. WILCHER, Secretary
CHRISTOPHER LILLY, Commissioner
R. GLENN JENNINGS, Executive Director
APPROVED BY AGENCY: October 10, 2005
FILED WITH LRC: October 13, 2005 at 2 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.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of insurance
Health Insurance Policy and Managed Care Division
(As Amended at ARRS, February 13, 2006)

806 KAR 17:320. Kentucky Access requirements.

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17B-031(1).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director [omen] to make reasonable 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. KRS 304.17B-031(1) requires the office [department] to promulgate administrative regulations necessary to carry out the provisions of KRS 304.17B regarding Kentucky Access. This administrative regulation establishes eligibility, application process, effective dates of coverage, and premium payment requirements for Kentucky Access.

Section 1. Definitions. (1) "Adverse decision" means a decision the enrollee finds unfavorable that is not a coverage denial or adverse determination and that is reviewable [may be reviewed] by the office.
(2) "Agent" means a licensed agent or a licensed agency.
(3) [69] "COBRA" is defined in KRS 304.17A-005(7)[69].
(4) [69] "Creditable coverage" is defined in KRS 304.17A-005(8)[69].
(5) [69] "Department" means the department of insurance.
(6) "Enrollee" is defined in KRS 304 17B-001(9).
(7) "Future effective date" means a date no earlier than the first day of the month following the month of application and no later than a date three (3) months after the month of application.
(8) "Government" means any political unit, including local, city, county, state, and federal authority.
(9) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17B-001(11).
(10) "Guaranteed Acceptance Program qualified individual" is defined in KRS 304.17A-005(16).
(11) "Insurer" is defined in KRS 304.17A-005(24) [69].
(12) "Kentucky Access" is defined in KRS 304.17B-001(17).
(13) "Month of application" means:
(a) The month in which the date of receipt is logged by the third-party administrator for the application; or
(b) The month of the postmark date, if the application has a postmark date, before the last three (3) days of the month prior to its receipt (except that an application having a postmark date before the last three (3) days of the month prior to its receipt shall be treated as having been received during the month of its postmark date).
(14) "Office" is defined in KRS 304.1-060(2).
(15) [64] "Third-party administrator" means the administrator selected by the office [department] pursuant to KRS 304.17B-011(1) to administer Kentucky Access.

Section 2. Applicant Eligibility Requirements. (1) An individual applying for Kentucky Access shall meet the following eligibility requirements:
(a) The applicant shall be an eligible individual in accordance with KRS 304.17B-015(1);
(b) The applicant shall be eligible as a GAP qualified individual pursuant to KRS 304.17B-015(4)(a); or
(c) The applicant shall be determined eligible for coverage pursuant to KRS 304.17B-015(2).
(2) Proof of eligibility for Kentucky Access shall be submitted to the third-party administrator when the application is submitted:
(a) An eligible individual who is qualifying pursuant to KRS 304.17B-015(1) shall submit documentation of at least eighteen (18) months of prior countable, creditable coverage provided by one (1) or more previous insurers or employers and documentation that the most recent coverage was group, governmental, or church plan coverage.
(b) An individual who is qualifying pursuant to KRS 304.17B-015(2) shall submit one (1) of the following:
1. A copy of a notice of rejection from one (1) insurer for individual health care coverage substantially similar to the Kentucky Access coverage for which the individual is applying, dated within the ninety (90) day period immediately preceding the effective [application] date for Kentucky Access;
2. A copy of a notice of a premium rate for individual health care coverage offered by an insurer that exceeds the Kentucky Access premium rate for substantially-similar coverage, dated within the ninety (90) day period immediately preceding the effective [application] date for Kentucky Access; or
3. Documentation from a physician dated within one (1) year preceding the effective date of Kentucky Access coverage stating the diagnosis of a high-cost condition as listed in KRS 304.17B-001(4).
(c) An individual who is qualifying as a GAP-qualified individual pursuant to KRS 304.17B-015(4)(a) shall submit documentation from the GAP participating insurer identifying the applicant as a GAP-qualified individual.
(d) An individual applying as a dependent pursuant to KRS 304.17B-015(4)(a) or Section 3 of this administrative regulation shall submit the documentation required by Section 3 of this administrative regulation.
(3) Proof of current Kentucky residency, required for eligible individuals applying pursuant to KRS 304.17B-015(1), shall be established by submitting documentation to the third-party administrator when the application is submitted, which may include a copy of:
(a) A valid Kentucky driver's license;
(b) A Kentucky personal identification card issued by the clerk of the applicant's county of residence [Kentucky Department of Transportation];
(c) A resident Kentucky income tax return for the most recent twelve (12) month tax period; or
(d) A receipt in the applicant's name for dwelling expenses in Kentucky, which [receipt] shall be dated within the most recent three (3) months before the date of application for Kentucky Access. This receipt may be for one (1) of the following payments: 1. Mortgage; 2. Rent; or 3. Utility bill.
(4) Proof of twelve (12) month Kentucky residency, required for individuals applying pursuant to KRS 304.17B-015(2) shall be established by submitting documentation to the third-party administrator when the application is submitted, which may include a copy of:
(a) A valid driver's license, dated twelve (12) months or more prior to the date of application for Kentucky Access;
(b) A Kentucky personal identification card issued by the clerk

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of the applicant's county of residence [Kentucky Department of Transportation], dated twelve (12) months or more prior to the date of application for Kentucky Access; 

(c) A resident Kentucky income tax return for the most recent twelve (12) month tax period; or 

(d) Two (2) receipts in the applicant's name for dwelling expenses in Kentucky: 
   1. One (1) of the receipts shall be dated twelve (12) months or more before the date of application for Kentucky Access; 
   2. The other receipt shall be dated within the most recent three (3) months before the date of application for Kentucky Access; and 
   3. Receipts may be for one (1) of the following payments: 
      a. Mortgage; 
      b. Rent; or 
      c. Utility bill. 

(5) An individual who is eligible for coverage under Kentucky Access pursuant to KRS 304.17B-015(2) or (4) shall be subject to a preexisting condition exclusion for any mental or physical condition for which medical advice, diagnosis, care or treatment was recommended or received within the last six (6) month period ending on the individual's enrollment date: 

(a) The exclusion time period shall not exceed a period of twelve (12) months following the enrollment date; and 

(b) The exclusion shall not apply to: 
   1. Genetic information described as a condition in the absence of a diagnosis; 
   2. Domestic violence; 
   3. Newborn children if added to Kentucky Access within thirty-one (31) days of the date of birth; and 
   4. Adopted children if added to Kentucky Access on the date the child was legally placed for adoption or the date the child was legally adopted. 

(6) An individual who is not an eligible individual, but is eligible pursuant to KRS 304.17B-015(2) or (4)(a), may submit documentary proof of countable, creditable coverage, if any, to reduce the preexisting condition exclusion time period as established in subsection (4) of this section by the number of months of his countable, creditable coverage. 

(7) If an individual terminated or was terminated from Kentucky Access coverage within the past twelve (12) months, he may reestablish eligibility, as permitted by KRS 304.17B-015(4)(c), by submitting documentary proof of a good faith reason for the termination, including: 

(a) Loss of employment; 

(b) Moving out of state and returning; or 

(c) Change in family status. 

(8) An individual who is eligible for COBRA continuation coverage or state continuation pursuant to KRS 304.18-110 shall not be eligible for Kentucky Access until: 

(a) The election time period for COBRA or state continuation of coverage has expired; 

(b) Coverage under COBRA or state continuation is exhausted; or 

(c) Coverage under COBRA or state continuation becomes unavailable. 

(9) If an individual is a noneligible individual and meets the requirements (eligible) for conversion coverage pursuant to KRS 304.18-110, the individual shall not be eligible for coverage under Kentucky Access until: 

(a) The time [election] period for electing conversion coverage has expired; or 

(b) Coverage under conversion becomes unavailable. 

(10) Nothing in subsection (3) of this section shall prevent an individual from qualifying for Kentucky Access who has received a premium conversion rate that is higher than a Kentucky Access premium rate for substantially similar coverage in accordance with KRS 304.17B-015(2)(b). 

(11) An individual shall not be eligible for Kentucky Access if: 

(i) The individual is applying as an eligible individual and one (1) of the following applies: 
   1. The Kentucky Access premium, deductible, coinsurance, or copayment is partially or entirely paid for or reimbursed by the person's employer; or 
   2. The individual's employer offers a health benefit plan. A health benefit plan may include an individual policy issued through, or with the permission of, an employer for its employees in accordance with KRS 304.17A-200(3). 

(b) The individual is applying pursuant to KRS 304.17B-015(2) and the Kentucky Access [except for an eligible individual; a person shall not be eligible for Kentucky Access if his] premiums, deductible, coinsurance or copayment is [are] partially or entirely paid [are] or reimbursed by any of the following: 

1. [entity,—excluding—] (a) A government-funded or sponsored program; 

2. [entity,—excluding—] (a) A government agency; 

3. [entity,—excluding—] (a) A health care provider; 

4. [entity,—excluding—] (a) A public or private foundation; 

5. [entity,—excluding—] (a) A church or church-affiliated organization; 

6. [entity,—excluding—] (a) An employer of the individual; or 

7. [entity,—excluding—] (a) A person except for the individual or the individual's: 
   1. [entity,—excluding—] (a) Parent; 
   2. [entity,—excluding—] (a) Adult child; 
   3. [entity,—excluding—] (a) Guardian; or 
   4. [entity,—excluding—] (a) Spouse. 

(12) An individual who is applying for Kentucky Access and is entitled to premium-free Medicare Part A, as determined by the Centers for Medicare and Medicaid Services shall not be eligible for coverage under Kentucky Access. 

Section 3. Dependent Eligibility. (1) A spouse or a child who is a twelve (12) month Kentucky resident, may receive coverage as a dependent of an enrollee: 

(a) A child shall be an eligible dependent if he is unmarried and: 

1. Under the age of nineteen (19); 

2. A student: 
   1. Under the age of twenty-five (25); 
   2. Enrolled full-time at an accredited educational institution; and 

3. Chiefly dependent upon the enrollee for support; or 

4. A child of any age who is: 
   1. Incapable of self-sustaining employment by reason of mental or physical disability; and 
   2. Chiefly dependent upon the enrollee for support. 

(2) A child shall be an eligible dependent if he is married and: 

(a) A child shall be an eligible dependent if he is unmarried and: 

1. Under the age of nineteen (19); 

2. A student: 
   1. Under the age of twenty-five (25); 
   2. Enrolled full-time at an accredited educational institution; and 

3. Chiefly dependent upon the enrollee for support; or 

4. A child of any age who is: 
   1. Incapable of self-sustaining employment by reason of mental or physical disability; and 
   2. Chiefly dependent upon the enrollee for support. 

(3) Documentation of dependent eligibility shall be submitted to the third-party administrator by the applicant when applying for coverage and annually thereafter, by the enrollee. [At the time of application and annually thereafter, an enrollee shall submit to the third-party administrator documentation of dependent eligibility] 

(a) For eligibility pursuant to subsection (2) (b) of this section: 

1. Federal or state income tax records for the most recent twelve (12) month tax period, and 

2. Letter of verification of full-time student status. 

(b) For eligibility pursuant to subsection (2) (c) of this section: 

1. Federal or state income tax records for the most recent twelve (12) month tax period; and 

2. Letter of determination of disability from the Social Security Administration. 

(4) An enrollee shall submit documentation of dependent eligibility pursuant to subsection (3) of this section within 120 days after a child covered as a dependent of the enrollee reaches age nineteen (19). 

(5) An enrollee shall submit to the third-party administrator documentation of dependent spouse eligibility, which may include a copy of: 

(a) A joint federal or state tax return for the most recent twelve (12) month tax period; 

(b) A marriage certificate; or 

(c) A signed attestation or affidavit verifying the existence of a valid marriage between the enrollee and dependent spouse. [Proof may be requested that the disability creating eligibility pursuant to subsection (3)(e) of this section is continuing, but the request shall be no more than once per calendar year after the two (2) year period following enrollment of the dependent.] 

Section 4. Application Process. (1) An applicant for Kentucky Access: 

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(a) May select one (1) of the following types of coverage:
   1. Individual; or
   2. Family; and
(b) Shall submit to the third-party administrator:
   1. A completed:
      a. Application form HIPMC-KA-1 [12/2005] ([40/02]), if the person is applying for Kentucky Access pursuant to Section 2 of this administrative regulation;
      b. Section III of application form HIPMC-KA-1 [12/2005] ([40/02]), if the person is applying for dependent coverage when the initial application for coverage is submitted; or
      c. Application form HIPMC-KA-2 [06/01], if the person is applying for dependent coverage after the enrollee is enrolled in Kentucky Access;
   2. Premium payment for at least two (2) months or more, depending upon the premium payment option selected pursuant to Section 8(3) of this administrative regulation.
(2) Application processing shall be performed as follows:
   (a) Upon the receipt of an application, the third-party administrator's mail room shall log the date of receipt of the application and process applications in order of their receipt.
   (b) The third-party administrator shall review each application to determine if the application is complete.
   (c) If an application is complete, the third-party administrator shall determine within fifteen (15) business days of receipt of the application if applicant is eligible for Kentucky Access coverage.
   (d) If an application is not complete, the third-party administrator shall:
      1. Pendl the application; and
      2. Notify the applicant in writing that the application is incomplete. The written notification shall:
         a. Identify the missing information needed to complete the application; and
         b. Give the applicant thirty (30) days to provide the information.
   (3) If an applicant fails to provide the information within thirty (30) days, the third-party administrator shall determine the applicant ineligible and send written notice of the determination of ineligibility, which shall include:
      1. The reason for ineligibility; and
      2. The right to appeal the determination in accordance with Section 5 of this administrative regulation.
(3) A determination of ineligibility in accordance with subsection (2)(f) of this section shall not preclude the applicant from filing a new application for Kentucky Access.
(4) Upon a determination of eligibility, the third-party administrator shall send to the applicant within seven (7) days:
   (a) An identification card; and
   (b) A health benefit plan coverage document.
(5) Upon a determination of ineligibility, the third-party administrator shall send to the applicant a letter of notification of the:
   (a) Determination of ineligibility; and
   (b) Right to appeal the determination in accordance with Section 5 of this administrative regulation.
Section 5. Appeal of Determination of Ineligibility. (1) An applicant may request a reconsideration of a determination of ineligibility by filing a written explanation of the basis for the request for reconsideration with the third-party administrator, within thirty (30) days of a determination of ineligibility.
(2) The third-party administrator shall render a decision within thirty (30) days of receipt of the request for reconsideration.
(3) An applicant may appeal the third-party administrator's adverse decision on reconsideration by filing a written request for a review by the office within sixty (60) days, the office shall:
   (a) Review the applicant's appeal of adverse decision and make a determination of;
   (b) Refer the applicant for an administrative hearing [with the department within thirty (30) days of the adverse determination].
(4) Upon referral by the office, [The department shall schedule] an administrative hearing shall be scheduled in accordance with KRS 304.2-310(d) [upon an appeal to be held within sixty (60) days of receipt of the appeal. Notice of the hearing and conduct of the proceeding shall be in accordance with the requirements of KRS Chapter 136].
Section 6. Effective Dates of Coverage. (1) Unless a future effective date is requested by an applicant, coverage for Kentucky Access shall not be effective the first day of the month following the month of application in accordance with KRS 304.17B-019(5).
(2) If a determination of ineligibility is overturned on appeal pursuant to Section 5 of this administrative regulation, coverage for Kentucky Access shall be effective in accordance with subsection (1) of this section and this subsection.
(3) A dependent child added to an enrollee's [a-family] plan shall have coverage under Kentucky Access, effective:
   (a) From moment of birth for a newborn child of an otherwise eligible Kentucky Access enrollee, in accordance with KRS 307.17-042;
   (b) On the date of filing of a petition for adoption of a child, in accordance with KRS 304.17A-140;
   (c) On the date of filing an application for appointment as a court-appointed custodial guardian of a minor child, in accordance with KRS 304.17A-140; or [and]
   (d) On the first day of the month following the month of application to add to Kentucky Access a dependent child not described in paragraph (a), (b), (c) of this subsection.
(4) A dependent spouse added to an enrollee's plan within thirty-one (31) days of a qualifying event shall have coverage under Kentucky Access effective the date of the qualifying event.
Section 7. Termination of Eligibility. An enrollee may be terminated due to one (1) of the following:
(1) An enrollee who cease to meet the eligibility requirements of Section 2 or 3 of this administrative regulation may be terminated by the third party administrator at the end of the month in which the thirty (30) day notice, required by KRS 304.17A-245(1), expires; or
(2) Coverage under Kentucky Access shall cease when the first of the following circumstances occurs:
   (a) On the earlier date that:
      1. An enrollee gives written notice that the enrollee [he] is no longer a resident of Kentucky; or
   (b) Documented evidence is received by Kentucky Access that the enrollee is no longer a resident of Kentucky.
   (b) On the later date of an enrollee's:
      1. Written notice of termination is received; or
   (c) Termination is requested;
   (c) Upon the death of the enrollee; [he]
   (d) On the date the lifetime limit of KRS 304.17B-015(4)(d) is met; or
   (d) On the date that Medicare Part D coverage begins.
Section 8. Premium Notice. (1) Premiums for Kentucky Access shall be billed by the third-party administrator by the first business day of each month for the following month's coverage.
(2) Premiums not received by the premium due date shall result in termination of Kentucky Access coverage effective the first day of the month for which the premium is applicable, subject to the grace period contained in KRS 304.17-070.
(3) Premiums may be paid in advance by arrangement with the third-party administrator as follows:
   (a) Monthly;
   (b) Quarterly;
   (c) Semiannually; or
   (d) Annually.
(4) Premium amounts for any dependent added to Kentucky Access shall be prorated based on the effective rate of coverage.
(5) Premium amounts for coverage issued by Kentucky Access are reviewed and are subject to change by the office (department) on an annual basis pursuant to KRS 304.17B-013.
(a) A new enrollee shall be charged the premium rate(s) in force on his effective date of coverage [he]; and
(b) An established enrollee shall be charged the premium
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sheets that are manufactured, collated, and sold by the manufacturer as a unit.
(6) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by an organization for sale at a gaming occasion.
(7) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.
(8) "Break open bingo" means a bingo game in which the numbers on the face are hidden until after purchase.
(9) "Bundie" means to price a certain amount of bingo paper faces for a certain price with the patron choosing the type of packs that make up the total faces.
(10) "Called" means that a number located on a bingo ball has been:
(a) Selected by the selection device;
(b) Verbally announced by the caller;
(c) Displayed on the scoreboard or other display device; and
(d) Placed in a ball tray or other device.
(11) "Cash" means currency, coinage, or a negotiable instrument.
(12) "Cash short" means the total amount of money actually received from the sale of gaming supplies at a gaming occasion less than the amount of money due from the sale of that quantity of gaming supplies.
(13) "Cash over" means the total amount of money actually received from the sale of gaming supplies at a gaming occasion is more than the amount of money due from the sale of that quantity of gaming supplies.
(14) "Chief executive officer" means the director of the organization or the person who has legal authority to direct the management of the organization, distributor, manufacturer, or facility.
(15) "Chief financial officer" means the person who shall be:
(a) Responsible for overseeing the financial activities of the organization, distributor, manufacturer, or facility;
(b) The custodian of the gaming occasion records; and
(c) Responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office.
(16) "Conditioning" means a restatement of:
(a) How many numbers or combinations of numbers are being selected by the players;
(b) The way in which the numbers are being wagered; and
(c) The corresponding dollar amount wagered.
(17) "Continuation game" means a multigame bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.
(18) "Covered" means daubed or smeared with indelible ink. If using a disposable paper bingo face, or marked electronically if using a card-minding device.
(19) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.
(20) "Deal" means each separate game or series of pulltab which has the same serial number and which may be composed of multiple packages.
(21) "Digital signature" means a method by which data, as in a software application, is expressed in a calculated number which is used to verify the accuracy of the data or a copy of the data.
(22) "Disposable paper bingo face" means a nonreusable bingo face assembled in a single sheet, multiple face sheet, pad, or pack form.
(23) "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected.
(24) "EPROM" means Electrically Programmable ROM.
(25) "Event game" means a type of pulltab game, with or without a seat card, that is designed by the manufacturer so that certain prizes are determined by:
(a) The draw of a bingo ball; or
(b) A method of randomly selecting numbers or symbols...
that correspond to the numbers or symbols printed on a ticket.
(26) "Exception log" means a record documenting a prize payout that has not been authorized by the computer.
(27) "Face" means a paper or an electronic representation containing:
(a) Five (5) rows of five (5) squares with numbers or symbols;
(b) A free center space;
(c) The letters "B", "I", "N", "O", "G" printed in order over the five (5) columns; and
(d) A unique perm number identifying each face.
(28) "Fixed base card-minding device" means a computer system, not manufactured by a licensed manufacturer, which has been loaded or programmed by a service provider to enable it to function as a card-minding device.
(29) "File" means the paper included with a deal of pull tabs that identifies the game and payout structure.
(30) "Flashboard" or "display board" means a board that displays the bingo numbers called.
(31) "Form" number means a manufacturer's alphanumeric number that identifies a pull tab payout structure.
(32) "Gambling" means staking or risking something of value on the outcome of a contest, game, gaming scheme, or gaming device which:
(a) Is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value if there is a certain outcome; and
(b) Does not include a contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill.
(33) "Gambling occasion program", "bingo program", "occasion program", or "program" means a written list of all games to be played and prize amounts to be paid for each game during a gambling occasion. Including, if the prizes are based on attendance, the amount of the prize and the attendance required.
(34) "Gambling occasion" means an event at which charitable gambling takes place, such as a bingo session, a charity fundraising event, a special limited charity fundraising event, a sale of pull tabs, or a sale of raffle tickets.
(35) "Hand-held card-minding device" means a hand-held computer that is either manufactured or customized by the manufacturer to operate as a card-minding device.
(36) "Hard card" means a reusable card bearing a bingo face or faces.
(37) "Inside ticket" means a blank Keno ticket:
(a) Consists of eighty (80) blocks numbered one (1) through eighty (80); and
(b) Contains a bet block.
(38) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or sealed card prizes which is carried over from deal to deal until it is won.
(39) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.
(40) "Keno" means a numbers game in which:
(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and
(b) The winner and the prize is determined by correctly matching the participant's numbers to the twenty (20) numbers generated in the game.
(41) "Keno equipment" means:
(a) An electronic selection device;
(b) A random number generator;
(c) A computerized Keno system; or
(d) An integrated system of computer hardware and software that:
1. Generates a player ticket;
2. Records a game outcome;
3. Verifies a winning ticket;
4. Produces a management report; or
5. Performs other internal audit controls of a Keno operation.
(42) "Keno manager" means the person in charge of the operation of the Keno game.
(43) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pull tab in a deal.
(44) "Merchandise prize" means a noncash prize given away at a charitable gaming event either as a game prize or as a door prize.
(45) "Model number" means the name or number designated by the manufacturer that indicates the unique structural design of a hand-held card-minding device or card-minding system component.
(46) "Multi-packaged pulltab deal" means a pulltab game consisting of a single deal of not more than 4,000 tickets that is packed in subsets and in which each subset contributes to a prize pool board.
(47) "Multirace ticket" means a single ticket that allows a player to make the same wager on consecutive games.
(48) "Outside ticket" means a computer-generated ticket given to the player which reflects game and wagering information.
(49) "Perm number" means the number located on a bingo face that identifies the unique pattern of numbers appearing on that face.
(50) "Pickle jar, bonanza ball, or hot ball" means games played in conjunction with other bingo games which:
(a) A bingo ball is placed in a sealed equipment device prior to the start of certain bingo games or all bingo games; and
(b) A patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball, if the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played.
(51) "Player pick bingo" means that the patron picks the numbers which constitute a bingo on his or her face or faces and a machine prints those numbers on the bingo face at the gaming occasion before the game is played.
(52) "Player tracking software" means computer software installed on a card-minding device system or other point of sale system that is used to identify or track certain characteristics of bingo players, including personal data and purchasing habits.
(53) "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo occasion if no player wins at that session.
(54) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals designed by the manufacturer so that a portion of the gross revenue is determined by the selection of one (1) deal to the next deal until won.
(55) "PROM" means programmable ROM.
(56) "Promotional" means any item available at no charge to all participants at an event.
(57) "Proprietary software" means custom computer software developed by the manufacturer that is a primary component of the card-minding device system and is required for a card-minding device to be used in a game of bingo.
(58) "Pulltab" means a charity game ticket.
(59) "Purchased prize" means any merchandise prize that was purchased and not donated.
(60) "Quick pick" means a number selection made for the player by a computer.
(61) "RAM" or "random access memory" means the electronic memory that a computer uses to store information.
(62) "Random number generator" means a device:
(a) For generating number values that exhibit characteristics of randomness; and
(b) Composed of:
1. Computer hardware; or
2. Software; or
3. A combination of computer hardware and software.
(63) "ROM" or "read only memory" means the electronic component used for storage of nonvolatile information in
Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on and may be either "PROM" or "EPROM.

(64) "Secondary component" means an additional software or hardware component that:
(a) is part of or is connected to a card-minding device system;
(b) Does not affect the conduct of the game of bingo;
(c) is provided by the manufacturer; and
(d) May include computer screen backgrounds, battery charge-up software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, or charging racks.

(65) "Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(66) "Selection device" means a device that:
(a) May be operated manually or automatically; and
(b) is used to randomly select bingo numbers.

(67) "Selection pool" means the bingo numbers in a selection device that have not been selected.

(68) "Serial number" means a number assigned by the manufacturer to identify the individual product.

(69) "Series number" means the number of unique faces contained in a series.

(70) "Set" means a case or cases of paper that contain one of each face in a series.

(71) "Site system" means computer hardware, software, and peripheral equipment that:
(a) is located at the bingo premises;
(b) is operated by the charitable organization;
(c) Interfaces with, connects with, controls or defines the operational parameters of card-minding devices; and
(d) May include the following components:
   1. Point of sale station;
   2. A caller verification system;
   3. Required printers;
   4. Dial-up modem;
   5. Proprietary executable software;
   6. Report generation software; and
   7. An accounting system or database.

(72) "Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device.

(73) "Transaction log" means a record of the same information printed on each outside ticket that is:
(a) Retained in the computer's memory; or
(b) Printed out by the computer.

(74) "Verification system" means a book of bingo faces compiled by the manufacturer or an electronic device created by the manufacturer that:
(a) Lists the unique patterns of numbers on each face by perm number;
(b) is used to verify the authenticity of a winning face.

(75) "Version number" means a unique number designated by the manufacturer to identify a specific version of software used on or by the card-minding device system.

(76) "Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

(77) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(78) "Year" is defined by KRS 238.505(25). "Advertising" means all-handout, direct, radio, television, advertising signs, billboards, and other media used to promote any event or activity requiring and promoting general and specific attention associated therewith.

(3) "Bet" means an area which indicates the dollar amount of the wager.

(4) "Bingo ball" is a ball imprinted with numbers and letters which is used in the selection process of a bingo game.

(5) "Bingo machine" is a type of selection device with a receptacle for the unselected bingo balls; a blower for sorting the balls; and a ball tray that contains seventy-five (75) balls in which to place the ball once it is called.

(6) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit.

(7) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by an organization for sale at a gaming occasion.

(8) "Bingo paper pack" is a group of single sheets of the same color or border which are sold separately but assembled together by the manufacturer or distributor for internal control purposes.

(9) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.

(10) "Bingo session" is a set period of time stated on the license during which bingo is played at a gaming occasion.

(11) "Bingo window" means completing the quarterly report, the federal-excess tax form, and the federal gaming forms. It shall not include handling charitable gaming funds, preparing gaming occasion records, or ordering supplies.

(12) "Break-open bingo" is a bingo game in which the numbers on the face are hidden until after purchase.

(13) "Bundling of bingo paper" means grouping a certain amount of bingo paper faces from a selection pool with the patron choosing the type of packs that make up the total faces.

(14) "Called" bingo number means the number located on a bingo ball that has been selected by the selection device and verbally announced by the caller. The number-called shall be displayed on the scoreboard or other display device and placed in a ball tray of the other device.

(15) "Cash" means currency, coinage, or a negotiable instrument.

(16) "Cash sheet" occurs when the total amount of money actually received from the sale of gaming supplies at a gaming occasion is less than the amount of money due from the sale of that quantity of gaming supplies.

(17) "Cash-over" occurs when the total amount of money actually received from the sale of gaming supplies at a gaming occasion is more than the amount of money due from the sale of that quantity of gaming supplies.

(18) "Chief Executive officer" means the person who has legal authority to act on behalf of the organization, distributor, manufacturer, or faculty.

(19) "Chief financial officer" means the person responsible for overseeing the financial activities of the organization, distributor, manufacturer, or faculty. The chief financial officer shall be the custodian of the gaming occasion records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office.

(20) "Coin board" is a pull-tab game in which the prize consists of coins or currency other than prize.

(21) "Coin" or "Face" means a card or paper or an electronic representation containing:
   (a) Five (5) rows of five (5) squares with numbers or symbols;
   (b) A free center space;
   (c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns; and
   (d) A unique perm number identifying each card or face.

(22) "Cash-on-hand" means currency, coinage, or a negotiable instrument.

(23) "Conditioning" means a restatement of:
   (a) How many numbers or combinations of numbers are being selected by the players;
   (b) The way in which the numbers are being wagered; and
   (c) The corresponding dollar amount wagered.

(24) "Continue" means a multi-bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.

(25) "Covered" means daubed or emaused with indelible ink if using a disposable paper bingo card, or marked electronically if using a card-minding device.

(26) "Cumulative" or "carry-over" or "progressive" pull-tab game means a pull-tab game consisting of multiple pull-tab deals that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board to be a pull-tab game designed by the manufacturer to include a jackpot
prize that is carried over from deal to deal until it is won.

- [261] [231] [7] "Custom card-minding-dwove" means a card
minding device that uses proprietary software and hardware
(a) That is either manufactured or customized by the manu-
facturer;
or
(b) Of which the manufacturer controls its production.

[9] "Deal" means each separate game or series of pulltab
[sharit-game-betters - with the same serial number] on which the
profit is calculated and all winners awarded. A deal may be com-
posed of multiple packages.

- [261] [241] [9] "Designator" means an item:
(a) Upon which bingo letters and numbers are imprinted, and
(b) Used in a method or process.

- [10] "Digital signature" means a method [methods] by which
data, as in a software application, is expressed in a calculated
number-which is used to verify the accuracy of the data or a copy
of the data.

- [271] [261] [141] "Disposible-paper-bingo-face"[card] means a
-nonscannable]-paper [bingo-face assembling in a single sheet,
multiple-face sheet, pair, or pack form] card.

- [281] [261] [142] "Draw-ticket" means a blank ticket upon
which the numbers are marked as they are randomly selected.

- [291] [271] [143] "EPROM" means Erasable-Programmable
ROM.

- [301] [281] [144] "Exception log" means a record document-
ing a price pay out that has not been authorized by the computer.

- [311] [291] "Event game" means a type of pull-tab game that is
designed by the manufacturer so that certain prizes are de-
termined by a draw of a random ball or by some other approved
approved event. The approved specific event must consist of a method
of randomly selecting numbers, or symbols that correspond to
the numbers or symbols printed on a ticket. It can be played with or
without a seal card.

- [321] [291] "Face" means a paper or an electronic representa-
tion containing:
(a) Five (5) rows of five (5) squares with numbers or symbols;
(b) A free center space;
(c) The letters "FI", "IA", "C", "C" printed in order over the
five (5) columns; and
(d) A unique perm number identifying each face.

- [331] [291] "Flashcard渎 card-minding-device" means a com-
puter system not necessarily manufactured by a licensed manu-
facturer, which has been loaded with proprietary software by a
licensed manufacturer to enable it to function as a card-minding
dwove.

- [341] [291] [145] "Flano" is a paper included with a deal of
pull tabs that identifies the game and payout structure [means a
piece of paper, cardboard or similar material that bears printed
information relating to the:
(a) Number of prizes to be awarded; and
(b) Specific prize amounts in a particular deal of charity game
tickets.

- [351] [291] [146] "Flashboard or display board" is a board that dis-
plays the bingo numbers called.

- [361] [291] "Form number" is a manufacturer's alphanumeric
number which identifies a pull-tab pay off structure.

- [371] [291] "Gambling" means asking or taking something of
greater value on the outcome of a contest game, a gaming scheme,
or gaming device which is based upon an element of chance; ac-
cord with an agreement or understanding that someone will receive
something of value in the event of a certain outcome. A contest
or game in which eligibility to participate is determined by chance
and the ultimate winner is determined by skill shall not be considered
to be gambling.

- [381] [291] "Game program" means a written list of all games
to be played and prize amounts to be paid for each game during a
gaming occasion. If the prizes are based on attendance the
amount of the prize and the attendance-requires shall be set forth
in the program.

- [391] [291] "Gaming corporation" means an event at which
charitable gaming takes place, such as a bingo session, a charita-
table fundraising event, a special limited-chance fundraising event, a
close-out of pull tabs, or a close-out of raffle tickets.

- [401] [291] "Games" mean a monetary-benefit received from the
sale of raffle tickets, bingo cards or face, card-minding device,
pull tabs, charitable fundraising event, special limited-chance
fundraising event games, special limited-chance fundraising
event games, bad-check collections, and reasonable
cheque collection face minus bad cheque.

- [411] [291] "Hand-held card-minding device" means a hand-
held computer that is either manufactured or customized by the
manufacturer to operate as a card-minding device.

- [421] [291] "Hard card" is a scannable card bearing a bingo face
or face.

- [431] [291] [116] "Inscoded ticket" means a blank Keno ticket:
(a) Constructed with eighty (80) blocks numbered one (1)
through eighty (80); and
(b) Contains a bit block.

- [441] [291] "Jackpot-prize in a progressive pull-tab game" means
a prize in addition to the instant or seal-card prize which is
earned over from deal to deal until it is won [in a cumulative carry
over, or progressive pull tab game].

- [451] [291] [143] "Jar ticket" is a type of pull-tab game ticket which
is folded or placed and may become:

- [461] [291] [142] "Keno" means a numbers game in which
(a) A participant chooses from twenty-four (24) to ten (10) numbers
from a pool of eighty (80) numbers, and
(b) The winner and the prizes are determined by correctly
matching the participant's numbers to the twenty (20) numbers generated
in the game.

- [471] [291] [148] "Keno equipment" means:
(a) An electronic collection-dwove;
(b) A random-number generator;
and
(c) A computerized Keno system;
or
(d) An integrated system of computer hardware and software
that:
1. Generates a player ticket;
2. Records a game outcome;
3. Verifies a winning ticket;
4. Produces a management report;
and
5. Performs other internal audit controls of a Keno operation.

- [481] [291] [149] "Keno manager" means the person in charge
of the operation of the Keno game.

- [491] [291] [150] "Last sale pull-tab game" means a game designed
by the manufacturer in which a prize is awarded to the person
who bought the last pull tab in a deal and it is:

- [501] [291] [146] "Member of an organization" means a person
who regularly engages in the activities of an organization in addition to
any involvement with charitable gaming activities. A person who
participates only in the charitable gaming-related activities of an
organization shall not be deemed a member of that organization.

- [511] [291] [147] "Members-only-prize" means a noncash prize given
away at a charitable gaming event either as a game prize or a door
prize.

- [521] [291] [147] "Medal number" means the name of:
 [a] number designated by the manufacturer that indicates the unique
structural design of a hand-held [electronic] card-minding device or
card-minding system component.

- [531] [291] [151] "Multi-faceted pull-tab game" means a
pull-tab game consisting of a single deal consisting of not more than
4,000 tickets that is packaged in a single and is the result of a
贡献 to a prize pool based deal in which each package
contributes to the prize pool.

- [541] [291] [152] "Multi-price ticket" means a single-ticket which
allows a player to make the same wager on consecutive games.

- [551] [291] [153] "One" means the number of bingo faces on a single
print sheet.

- [561] [291] [153] "Outsider ticket" means a computer gener-
at ticket given to the player which reflects certain game and
wagering information.

- [571] [291] [154] "Perm number" means the number sometimes
[generally] located in the center space of a bingo face

- [1631] -
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[card] [that identifies the unique pattern of numbers appearing] [printed] [on that face] [card OR FACE].

(601) (661) "Player-pick bingo" means the patron picks the numbers which constitute a bingo on his or her face or faces and a machine-printed those numbers on the bingo face(s) at the gaming occasion before the game is played.

(602) (662) ["Progressive bingo" means a bingo game in which the prize is carried forward to the next bingo occasion if no player wins at that session.

(603) "Progressive or call-number pull-tab game" means a pull-tab game consisting of one (1) or more draw balls designated by the manufacturer so that a portion of the draw's predetermined prize payout is designated to a progressive jackpot; the jackpot value may accumulate from (1) draw to the next draw.

(604) (663) ["PRROM" means programmable ROM.

(605) (664) "Promotional" means any item available at no charge to all participants at an event.

(606) (665) ["Proprietary software" means custom computer software developed by the manufacturer that is a primary component of the card-minding device system and is required for a card-minding device to be used in a game of bingo.

(607) (666) ["Purse" means any moneys or moneys that was purchased and not donated.

(608) (667) ["Quick pick" means a number selection made for the player by a computer.

(609) (668) "Quarter" means a three (3)-month segment starting in January and ending in December of a calendar year.

(702) (703) "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(704) (705) ["Random-number generator" means a device:

(a) For generating number-variables that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software;

3. A combination of computer hardware and software.

(706) (707) ["Ringo" means to manually re-allocate the prize-payout of a winning ticket according to the programmed schedule."

(713) (714) "ROM" or "read only memory" is the means:

(a) The electronic component used for storage of nonvolatile information in-Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on; it can be either:

(b) ["PRROM" or (and]

(c) ["EPROM".

"Seal-card game with a cumulative or call-number prize" means a type of charity game ticket utilizing a seal card in which:

(a) The game manufacturer has established a prize pool composed of specifically dedicated prize amounts originating from the play of a deal or deals of a particular game; and

(b) These specially dedicated prize amounts accumulate in the event no one (1) winner is picked."

(751) (752) ["Seal-card" is a card included with a deal of pull tabs that is used to determine winners.

(752) (753) ["Secondary component" means an additional software or hardware component that is [component, provided by

the manufacturer, that:

(a) Are part of or is [are] connected to a card-minding device system and [that] does not affect the conduct of the game of bingo it's provided by the manufacturer and [and]

(b) [may include]:

1) [computer-screen backgrounds];

2) [battery charge-up software routines];

3) [monitors];

4) [keyboards];

5) [printer drivers];

6) [printers];

7) [printer drivers, and]

8) [charging racks]."

(752) (753) ["Security" means a person or persons whose sole duty is to promote and provide peace, order, and safety at a charitable game event and may include patrolling the parking lot and accompanying the organization's personnel to the bank or night depository with charitable gaming records; it does not include security or alarm systems, or special lighting for the building or parking lot.

(757) (758) ["Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(758) (759) ["Selection device" means a device that:

(a) May be operated:

1. Manually; or

2. Automatically, and

(b) Is used to randomly select bingo numbers.

(759) (773) ["Selection pool" means the bingo numbers in a selection device that have not been selected.

(759) (774) ["Serial number" means a number assigned by the manufacturer to track the individual product [that is:

(a) For a paper card or face, printed by the manufacturer on each card in a set and is unique to the set; and

(b) For an electronic card device, the unique identification number assigned by a manufacturer to a specific electronic card-minding device or other component of a card-minding device system.

(761) (775) ["Sequeence" is a distinguishable number of unique bingo faces.

(761) (764) ["Sequeence-number" means the number of unique cards [set] faces found in a set.

(762) (763) ["Sequeenumber" includes a specific feature of paper cards from the same product line that:

(a) Are the same:

1. Color; and

2. Border pattern;

(b) Are imprinted with the same serial number; and

(c) May include more than one (1) series of:

1. Cards; or

2. Faces;[7]

(783) (784) ["Site-system" means computer hardware, software, and peripheral equipment that:

(a) Is located at the bingo premises;

(b) Is operated by the charitable organization;

(c) Interfaces with or controls; or defines the operational parameters of card-minding devices; and

(d) May include the following components:

1. Point-of-sale station;

2. A caller verification system;

3. Required printers;

4. Dial-up modem;

5. Proprietary executable software;

6. Report generation software; and

7. An accounting system or database.

(783) (784) ["Standard card-minding device" means a cardboard-minding device that uses proprietary software which is written independent of other than the specification of minimum system requirements.

(784) (784) ["System" means the unique identification number of the card-minding device, if any, assigned by a manufacturer to a specific standard card-minding device.

(785) (786) ["Transaction log" means a record of the same information printed on each outside ticket.

- 1632 -
(a) Retained in the computer's memory; or
(b) Printed out by the computer.
(881) [661] [(43) "Twenty-four (24) hour period" means a twenty-four (24) hour period of time commencing at 12:01 a.m. and ending at twelve (12) midnight.
(881) [662] [(44) "Eye" means the number of bingo-paper sheets contained in a bingo-paper pack.
(881) [663] [(45) "Lite-brite expense" means money paid for electric, gas, water, sewer, and trash collection. It may also include any telephone and cable expenses that are incurred by the organization for credit card services and card-minding devices.
(881) [664] [(46) "Vending system" means a book of bingo cards [cards] [card] compiled by the manufacturer or an electronics device created by the manufacturer that
(a) Lists the unique patterns of numbers on each [card] [card number]; and
(b) Is used to verify the authenticity of a winning [card] [card number].
(881) [665] [(47) "Version number" means a unique number designated by the manufacturer to identify [originate] [originate] [specific version of software] [software] on or by the card-minding device system.
(881) [666] [(48) "Way-ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.
(881) [667] [(49) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.
(881) [668] [(50) "Year" is defined by KRS 238.606(26).]

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner

JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:005. Exempt organizations.

RELATES TO: KRS 238.535
STATUTORY AUTHORITY: KRS 238.515(9), 238.535(2), (9)
(4), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.535(2) authorizes [(4)-](7) authorizes issuance of an exemption from licensing requirements to organizations meeting all licensing requirements if [when] no special limited charitable games (or-pulltab) are played and annual gross receipts do not exceed $25,000. KRS 238.535(2) requires charitable organizations to complete a form notifying the office of its exemption and requires completion of an annual financial report. This administrative regulation establishes the requirements for filing for an exemption and the annual reporting requirements [procedure for granting an exemption.]

Section 1. Form for Exemption. (1) An organization shall submit a complete, accurate, and verifiable Form CG-Exempt, Form for Organization for Gaming Under $25,000 (Exemption), [Form] at least thirty (30) days prior to the expected date of gaming.
(2) The form shall not be considered complete until all deficiencies are resolved.
(3) If [in the event] the organization does not respond to a [any] deficiency request within thirty (30) days, the form shall be deemed withdrawn, and the organization shall not be granted the exemption.
(4) If [in the event] the organization has submitted a complete form, and meets the requirements for licensure prescribed in KRS Chapter 238, the office shall issue a "Notification of Exemption."
(5) The organization shall not be required to file an additional exemption request form with the office if the gaming activities of the charitable organization remain exempt.
(6) The organization shall notify the office of any changes in the information contained on the form within thirty (30) days.
(7) An organization possessing a "Notice of Exemption" shall file an annual report with the office before December 31 of each year. This report shall be filed on Form CG-OFR, "Exempt Organization Annual Financial Report."

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form CG-Exempt [GGE], "Form for Organization Crossing Under $25,000 (Exemption)," 206 (6/69); and
(b) Form CG-OFR, "Exempt Organization Annual Financial Report.," 206 (4/20/69) (6/20/77),
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday [40601-2688], 8 a.m. to 4:30 p.m. [Monday through Friday.

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:010. Temporary license [licensure].

RELATES TO: KRS 238.525, 238.530, 238.535, 238.555
STATUTORY AUTHORITY: KRS 238.515(9), (238.653(5)); (9), 238.530(1), (2), (4), 238.535(11), 238.535(9), (12) (43)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.535(2) authorizes the office [department] to issue a temporary license to an applicant who has met the requirements for a license. KRS 238.525, 238.530, 238.535 and 238.535 establish requirements for licensure of qualifying charitable organizations, manufacturers, distributors and charitable gaming facilities. This administration regulation establishes the requirements for temporary licensure of a qualifying charitable organization, manufacturer, distributor or charitable gaming facility.

Section 1. Issuance of [Application for] Temporary License [Licensure]. A temporary license shall [may] shall be issued by the Office [Department] of Charitable Gaming to a charitable organization, manufacturer, distributor, or charitable gaming facility if the applicant has completed [exhibited] compliance with licensing requirements by completing and supplied complete, accurate, and verifiable [supplying the information] as requested on the appropriate license as established in 820 KAR 1:015, 1:016, and 1:029 [licensure] application form and has complied with all other license requirements for an annual license [licensure], which shall be
(a) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky;"
(b) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment;"
(c) Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment;"
(d) Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky;" or
(e) Form CG-Schedule A, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License;"
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Section 2. Form of Temporary Licenses. A temporary license issued by the Office [Department] of Charitable Gaming shall clearly state these:

(1) Name of the licensee;
(2) Physical address of the licensee;
(3) Date of issuance of the temporary license;
(4) Expiration date of the temporary license;
(5) Premises or location at which the charitable gaming will be conducted, if the temporary license is for a charitable organization or a charitable gaming facility;
(6) Type of temporary license issued (distributor, manufacturer, facility, or organization); and
(7) Address of the Office [Department] of Charitable Gaming.

For charitable organizations, the day and time for each session license shall also include the day(s) and time(s) of session(s) and the type of gaming to be conducted under the license.

Section 3. License (Processing) Fee. For each temporary license issued, the licensee shall pay a twenty-five ($25) dollar ([H] processing) fee. The fee shall accompany each application for temporary license.

The twenty-five ($25) dollar processing fee shall be credited to any balance due on the annual (regular) license fee at the time it is issued. The total temporary license fee charged in a year shall not exceed the annual license fee.

[Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky (02/02);
(b) Attachment CG-1A, "Tax Information Authorization (02/02);
(c) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment (02/02);
(d) Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (02/02);
(e) Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (02/02);
and
(f) Form CG-Schedule A, "Application for Charity-Fundraising Event License or Special Limited-Charity-Fundraising Event License (02/02);

(2) These forms may be inspected, obtained or copied, subject to applicable copyright laws, at the Department of Charitable Gaming, Public Protection and Regulation Cabinet, 132 Bright Park Boulevard, Frankfort, Kentucky 40601-2639, 8 a.m. to 4:30 p.m., Monday through Friday."

CHRISTOPHER L. LILLY, Commissioner and Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Bright Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5629, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:015. Issuance of annual license for a charitable organization [Permanent license].

RELATES TO: KRS 238.515(3), 238.525, 238.530, 238.535, 238.565

STATUTORY AUTHORITY: KRS 238.515(1), (2), (3), (9), 238.525(1), 238.530(1), (2), (3), (9), 238.535(9), 238.565(1), (2), (3), (9), (11), (12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.525(1) requires the office [department] to issue an annual or biennial [a-permanent] license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.530, 238.535, and 238.565. KRS 238.535(9) requires applicants for licensure to complete a required application form and KRS 238.535(12) requires the office to establish licensure fees not to exceed $500. This administrative regulation establishes the fees and procedures for annual [permanent] licensure of charitable organizations [manufacturers, distributors, and charitable gaming facilities],

Section 1. Application for Licensure. (1) A charitable [An] organization shall submit a complete, accurate, and verifiable application on Form CG-1, Application for License for Charitable Organization, at least sixty (60) days prior to the expiration of its license or expected date of gaming.

(2) An application shall not be considered complete until all deficiencies are resolved to the satisfaction of the office.

(3) If [in the event] the applicant does not file a written response [response or payment of deficiency request within thirty (30) days or does not (and) provide any requested documents, the application shall be deemed incomplete.

(4) Once the office has received a complete application, it shall grant or deny the license within sixty (60) days.

(5) The office shall [may] issue a license if the applicant has met the requirements for licensure set forth in KRS 238.535, paid all fees and fines, filed all reports required, filed an acceptable [a] financial plan if required, and complied with all terms and conditions of any applicable settlement agreement or probationary term.

(6) [60] The following persons shall be required to submit a fingerprint card if the person resides [they reside] out-of-state:

(a) The chief executive officer;
(b) The chief financial officer; and
(c) Each chairperson, all chairpersons, and all persons with executive authority or control of the charitable gaming license.

(7) If the application is denied, the applicant may [shall] be prohibited from applying for a period of one (1) year from the date of denial.

(8) The complete application was made for temporary licensure under 820 KAR 1:010. Applicants for permanent licensure shall submit to the department a complete application at least sixty (60) days prior to engaging in the conduct to be licensed. The applicant shall submit:

(a) Form CG-1, "Application for License for Charitable Organization to Conduct Charitable Gaming in the Commonwealth of Kentucky;" or
(b) Form CG-2, "Application for License for Distributor of Charitable Gaming Supplies and Equipment;" or
(c) Form CG-3, "Application for License for Manufacturer of Charitable Gaming Supplies and Equipment; or
(d) Form CG-4, "Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky;" or

(2) If the applicant satisfactorily meets the requirements for licensure prescribed in KRS Chapter 238, the department shall issue a permanent license.

Section 2. Information Required on License, Licenses [A-permanent license] issued by the Office [Department] of Charitable Gaming shall clearly state the:

(1) Name of the licensee;
(2) Physical address of the licensee;
(3) Date of issuance of the license;
(4) Expiration date of the license;
(5) Premises or location at which the charitable gaming will be conducted, if the license is for a charitable organization or a charitable gaming facility;
(6) Type of license issued (organization); and
(7) Address of the Office [Department] of Charitable Gaming.

(8) The day and time for each session [license shall also include day(s) and time(s) of session(s)] and the type of gaming to be conducted under the license.

Section 3. Fees for Licensure. (1) [The department shall collect]
Section 4, Change Request. (1) If the organization wishes to change the date, time, or location of a [the] gaming session, the charitable organization shall submit a completed form CG-DTL, Request to Change Playing Location, Day, or Time, (section 4, the appropriate change request form shall be submitted) thirty (30) days prior to the date of the requested change along with a fee of twenty-five ($25) dollars and a lease for the gaming location. The change request form shall be signed by an officer (and must be sent by United States mail, first-class postage prepaid). The organization shall not engage in the following (any license before) gaming (make the) requested date, time, or location change if the new license has not been received.

(2) If the organization wishes to change any other information contained in the license application, the charitable organization shall submit a completed form CG-OC, Request to Change Officers or Chairpersons (section 4, the appropriate change request form shall be submitted) thirty (30) days prior to the date of the requested change along with a fee of twenty-five ($25) dollars and a lease for the gaming location. The change request form shall be signed by an officer (and must be sent by United States mail, first-class postage prepaid). The organization shall not engage in the following license before gaming (make the) requested date, time, or location change if the new license has not been received.

Section 5, Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CG-1, Application for License for Charitable Organization (2006 [12/25] [6/05], to Conduct Charitable Gaming in the Commonwealth of Kentucky (02/02));

(b) [Attachment CG-1A, Tax Information Authorization (6/06/02/23)];

(e) Form CG-DTL, Request to Change Playing Location, Day, or Time (2006 [6/4]); and

(f) Form CG-OC, Request to Change Officers or Chairpersons (2006 [6/4]);

(c) Form CG-2, Application for License for Distributor of Charitable Gaming Supplies and Equipment (02/02);

(d) Form CG-4, Application for License for Manufacturer of Charitable Gaming Supplies and Equipment (02/02);

(e) Form CG-4, Application for License to Operate a Charitable Gaming Facility in the Commonwealth of Kentucky (02/02); and

(f) Form-CG-Schedule A, Application for Charity-Fundraising Event License or Special-Limited Charity-Fundraising Event License (02/02).

(2) This material [these forms] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Charitable Gaming, Environmental and Public Protection [and -Regulation] Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday (4060-2828), 8 a.m. to 4:30 p.m. [Monday through Friday].

TONY S. ROYALTY, Executive Director

CHRISTOPHER L. LILLY, Commissioner

JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: December 9, 2005
FILED WITH LPC: December 13, 2005

820 KAR 1:016. Distributor and manufacturer licenses.

RELATES TO: KRS 238.525, 238.530, 238.555(3)(b)

STATUTORY AUTHORITY: KRS 238.515(1), (2), (3), (4), (9), 238.530(1), (2), (4), (5), (6); 238.555(3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) requires the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.525(1) requires the office to issue an annual or biennial license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.530(1) and (2). KRS 238.530(4) requires applicants for license to complete a required application form and KRS 238.530(1) and (2) requires the office to establish licenses, not to exceed $1,000. This administrative regulation establishes the fees and procedures for annual licensure of distributors and manufacturers.

Section 1. Application for License. (1) An applicant for a distributor's or manufacturer's license shall submit a complete, accurate, and verifiable application on either Form CG-2, Application for a Distributor’s License, or Form CG-3, Application for a Manufacturer’s License, at least sixty (60) days prior to the expiration of its license or expected date of operation.

(2) As application shall not be considered complete until all deficiencies are resolved [to the satisfaction of the office].

(3) If the applicant does not file a written response [respond] to a [any] deficiency request within thirty (30) days or does not provide a requested document [and provide any requested documents], the application shall be deemed withdrawn.

(4) Once the office has received a complete application, it shall grant or deny the license within sixty (60) days.

(5) The office shall [may] issue a license if the applicant has met the requirements for licensure set forth in KRS 238 530, paid all fees and fines, filed all reports required, filed a financial plan if required, and complied with all terms and conditions of any appli-
cable settlement agreement or probationary terms.

(6) Fingerprint shall be required for [(6)] [The person re-
rquired to be fingerprinted are] the chief executive officer, the chief
financial officer, and anyone with a ten (10) percent or greater
financial interest in the licensee.

(7) [(6)] [In the event of a denial by the office of a license appli-
cation, the applicant may] [shall] be prohibited from reapplying for
a period of one (1) year from the date of denial.

(8) If the licensee wishes to change any information printed on
the license, the request shall be submitted prior to the date of
the change being made along with a fee of twenty-five (25) dollars.
The request shall be signed by an officer. The licensee shall re-
cieve the new license before making the requested change.

Section 2. Information Required on License. Licenses issued
by the Office of Charitable Gaming shall clearly state the:
(1) Name of the licensee;
(2) Physical address of the licensee;
(3) Date of issuance of the license;
(4) Expiration date of the license;
(5) Type of license issued (manufacturer or distributor); and
(6) Address of the Office of Charitable Gaming.

Section 3. Fees for License. (1) The annual license fee for
each distributor or manufacturer license issued shall be $1,000.
(2) A nonrefundable processing fee of twenty-five (25)
dollars shall:
(a) Accompany each application for licensure; and
(b) Be credited against the amount of the annual license
fee [A processing fee of twenty-five (25) dollars shall accompany
each application for licensure. The twenty-five (25) dollar pro-
cessing fee shall be credited to any balance due on the license at
the time it is issued].
(3) An annual license shall not be issued until the annual li-
cense fee is paid in full.
(4) The annual license shall be effective for one (1) year from
the date of issuance.

Section 4. Requirements of a Distributor. (1) [Any payment
from an owner, officer, employee, or member of the immediate
family of an owner, officer, or employee of a licensed charitable
gaming distributor to an owner, officer, employee, or member of
the immediate family of an owner, officer, or employee of a lien-
ced facility shall be considered prima facie evidence of influence
in violation of KRS 238.555(3)(h).]
(2) An owner, officer, employee, or member of the immediate
family of an owner, officer, or employee of a licensed charitable
gaming distributor shall not own, operate, or be employed by the
concession-stand in a charitable-gaming facility, whether the con-
cession-stand is operated by the facility or an independent con-
tractor.
(3) Pulltabs or bingo papers that are damaged shall not be
sold and shall be destroyed by burning, shredding, or defacing in
some manner to prevent their reuse. [The distributor shall list all
products destroyed by date of destruction and serial number on the
quarterly report.]
(2) [(4)] [A distributor shall maintain a separate bank account
for the operation of the distributorship that is not commingled with
a personal account or another business account. If the licensee
owns multiple distributorships, separate bank accounts shall be
maintained for each one (1).
(3) [(6)] Any payments received from a licensed [licensee]
charitable organization shall be by check drawn on the charitable
gaming account or electronic fund transfer from the charitable
gaming account.

Section 5. Requirements of a Manufacturer. A licensee who
does not receive payment in full from a distributor within sixty (60)
days of the delivery of charitable gaming supplies and equipment
shall notify the office of the delinquency in writing by letter stating
the name and license number of the delinquent distributor.

Section 6. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) Form CG-2, "Application for a Distributor's License (206
[05/05])" and
(b) Form CG-3, "Application for a Manufacturer's License (206
[12/05] [05/05])."
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Office of Charitable Gaming,
Environmental and Public Protection Cabinet, 132 Brighton Park
Boulevard, Frankfort, Kentucky 40601, Monday through Friday
[04/01-05/31], 8 a.m. to 4:30 p.m. [Monday through Friday.]

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Bnght-
ton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528,
fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)
820 KAR 1:017. Licensing inspections.

RELATES TO: KRS 238.530, 238.553, 238.555
STATUTORY AUTHORITY: KRS 238.515(1), (2), (9),
238.530(1), (2), (3)(e)(5), (6), 238.553(8), (9), 238.555(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.530,
238.553, and 238.555 authorize the office to license distributors,
manufacturers, charitable organizations and facilities. KRS
238.530(5) requires that manufacturers and distributors main-
tain records that are available for inspection for three (3) years
(charitable organizations, facilities, distributors, and manufacturers).
This administrative regulation establishes the criteria to be used in
verifying the information contained in an [the] application.

Section 1. (1)(a) An applicant for a charitable [an] organization
license or exemption shall be able to demonstrate its [their]
establishment and reasonable progress by independent and verifi-
ble information. This may include contracts [contract] or leases,
utility bills, records maintained by the parent organization, bank
records, and any other records that are appropriate.
(b) Upon inspection, an applicant for a charitable [an] organi-
zation license or exemption shall be able to demonstrate its [their]
maintenance of an office by copy of the business records, in-
cluding the articles of incorporation and by-laws, if any, the tax
forms, the check book and bank statements, and any other records
expected to be kept by that type of organization. [The organization
should also be able to demonstrate that the persons who would
avail themselves of their organization have a means of contacting
them.]
(c) An applicant for a facility license shall be able to demon-
strate that it is the entity that is operating the facility and that they
do not have any prohibited relationships with organizations, dis-
tributors, or manufacturers. This may include an inspection of its [their]
ofice including contracts, required reports, checkbook, bank
accounts, and any other records regarding the operation of the facility.
(2)(a) An applicant for a distributor's or manufacturer's license
shall be able to demonstrate prior to licensing that it manufactures
or distributes [they-manufacture or distribute] gaming supplies
from the locations stated on the [their] license application. This
may include an inspection of those locations and a demonstration
or explanation of its [their] ability to track gaming supplies and
maintain the appropriate records.
(b) An applicant for a distributor's or manufacturer's license
shall be responsible for all costs incurred by the office personnel
associated with the inspection of the applicant's main office and
any and all business locations indicated on the application or sub-
sequent additional locations. Prior to the scheduled location ins-
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specification(s), the office will provide the applicant a written estimate of all costs. These costs may include transportation, lodging, and the government’s per diem rate for all personnel required to conduct the location inspection as determined by the office. Any questions or concerns related to this written estimate must be directed to the office, in writing, prior to the location inspection.

(4) These inspections shall be completed by appropriate office personnel who shall file a report.

CHRISTOPHER L. LILLY, Commissioner and Acting Executive Director
J O H N W. C L A Y, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH THE AGENCY: September 12, 2005
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brigh ton Park Blvd., Frankfort, Kentucky 40601, phone (502)573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:025. Quarterly reports of a licensed charitable organization.

RELATES TO: KRS 238.560(3), 238.550(5), 238.570(1)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(5), [238.560(5), 238.570(1)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.550(5) requires [and 238.670(1) require] a licensed charitable organization to submit quarterly reports, KRS 238.570(1) requires a licensed charitable organization to [and 238.670(1) require] a licensed charitable organization to submit quarterly reports, KRS 238.570(1) requires a licensed charitable organization to report on [and 238.670(1) require] a licensed charitable organization to report on.

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the quarterly report is due.

Section 4. If the quarterly fee imposed by KRS 238.570(1) is not remitted when due, a fine of twenty-five (25) dollars per day, not to exceed two hundred dollars per quarter, shall be imposed on the licensed charitable organization until the quarterly fee has been received by the department.

The quarterly fee shall be considered remitted when due if:
(a) it has been mailed;
(b) it has been recorded by the department; or
(c) it has been postmarked by the due date;

The fine imposed in subsection (1) of this section shall be paid:
(a) to the Revenue Department of the state; or
(b) by check made payable to "Kentucky State Treasurer".

Section 5. Reporting Expenses. All expenses incurred by a licensee shall be reported on the quarterly report for the quarter in which the payment was made, or, if the payment was made before [and the payment was made before] the report was filed to department [department].

Section 6. Failure to File. Failure by an organization to file reports required by this administrative regulation, to pay quarterly fees, or to pay fines assessed for failure to timely file reports required by this administrative regulation, shall constitute grounds for revocation or denial of license.

Section 7. Incorporation of Reference. [The following material is incorporated by reference.]
(a) "Quarterly Activity Report", Form CG-QR, "Licensed Charitable Organization Quarterly Report, 2/06 [1/06] [2/06]" is incorporated by reference, [July—2006 Edition], Department of Charitable Gaming;
(b) "Charitable Gaming Account Information", Attachment A, (July—2006 Edition), Department of Charitable Gaming;
(c) "Report of All Winners of Prizes with a Fair Market Value of $500 or More", Attachment B, (July—2006 Edition), Department of Charitable Gaming;
(d) "Special License Activity Report", Attachment C, (July—2001 Edition), Department of Charitable Gaming;
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:025. Quarterly reports of a licensed charitable gaming facility.

RELATES TO: KRS 238.555(5), 238.560(3)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), (238.555(6), 238.560(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.555(6) requires a licensed charitable gaming facility to report to the office [department] at least quarterly concerning its operation. This administrative regulation establishes the method and time of filing the required reports.

Section 1. Quarterly Reporting Period Defined. (1) A complete, accurate, legible, and verifiable quarterly report, in accordance with Section 2 of this administrative regulation, shall be submitted by a licensed charitable gaming facility on or before the following dates:

- April 30, for the quarter January 1 to March 31;
- July 31, for the quarter April 1 to June 30;
- October 31, for the quarter July 1 to September 30; and
- January 31, for the quarter October 1 to December 31.

(b) If the due [shall be submitted by a licensed charitable gaming facility on or before the following dates:
- April 30, July 31, October 31, and January 31] (within thirty (30) days following the close of each calendar year quarter)-if the date [30th day following the close of the calendar-quarter] is on a Saturday, Sunday or legal holiday, the report shall be due on the first business day thereafter.

(2) A quarterly report shall be considered filed [submitted] when due if it has been:
(a) Mailed to the office [department] by first class mail, postage prepaid, to the correct address and postmarked by the due date; or
(b) Received in the office [department] by hand-delivery on or before the due date.

Section 2. Quarterly Reports. A quarterly report shall:
(1) Be submitted on a Form CG-FACOR;
(2) Be submitted for each quarter that the facility is licensed;
(3) Be completed in ink or typewritten;
(4) Include the original signature and printed name of [Be signed by] the chief executive officer of the license holder (and chief financial officers of the license holder); and
(5) [Revised to include:] [Be prepared by an individual other than the chief executive officer; or financial officer; or be signed by the preparer.

Section 3. Late File. (1) If the quarterly report required by Section 1 of this administrative regulation is not submitted when due, a fine of twenty-five (25) dollars per quarter, shall be imposed on the licensed charitable gaming facility until the quarterly report has been received by the department.

(2) The quarterly report shall be considered submitted when due if:
(a) It has been mailed:
   - To the department by first class mail;
   - Postage prepaid;
   - To the correct address; and
(b) It has been postmarked by the due date; or
(c) It has been received by hand-delivery to the department on or before the due date.

(3) The fine imposed in subsection (1) of this section shall be paid:
(a) Within ten (10) days of receipt of an invoice from the department; and
(b) By check made payable to "Kentucky State Treasurer."


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)


RELATES TO: KRS 238.530, 238.560(3), 238.546(1)(bc)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.530(5), 238.550(3) [238.546(1)(bc)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.546(1)(bc) permits licensed charitable organizations to offer card-minding devices, as defined in KRS 238.560(28), for use by bingo players. KRS 238.546(5) requires that a licensed charitable organization obtain charitable-gaming supplies and equipment, of which card-minding devices are a type, only from a licensed distributor. KRS 238.530(5) authorizes the office to promulgate an administrative regulation [permits-the-office] [department] to require a licensed distributor to report all [on-line activities regarding the furnishing of] charitable gaming supplies and equipment furnished [with] [The content and frequency of these reports shall be prescribed by administrative regulation.] This administrative regulation.
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Section 1. Quarterly Reports. [Concerning card-minding devices shall be completed in accordance with the following:] (1) A quarterly report shall:
(1) Be submitted on Form CG-DIS/CMD: A licensed distributor shall submit the report required by this administrative regulation on a Form CG-DIS/CMD, Distributor’s Quarterly Usage-Report Regarding Card-Minding Devices;
(2) Be submitted for each quarter that the distributor is licensed;
(3) Be completed in ink or typed;
(4) Include the original signature and printed name of the chief executive officer of the license holder; and
(5) Include the original signature and printed name of the preparer. [The report shall be signed by the chief executive and chief financial officer of the licensed distributor, and if prepared by an individual other than the chief executive officer, the report shall be signed by the preparer.]

Section 2. Reporting Period Defined. (1) A complete, accurate, legible, and verifiable quarterly report, in accordance with Section 1 of this administrative regulation, shall be submitted by a licensed distributor on or before the following dates:
   1. April 30, for the quarter January 1 to March 31;
   2. July 31, for the quarter April 1 to June 30;
   3. October 31, for the quarter July 1 to September 30; and
   4. January 31, for the quarter October 1 to December 31.

   (b) [Completed Form CG-DIS/CMD] [shall be submitted by a licensed distributor on or before the following dates: April 30, July 31, October 31, and January 31] [within thirty (30) days following the close of each calendar year quarter]; if the due date [30th day following the close of the calendar quarter] is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

   (2) The report shall be considered filed [submitted] when due if it has been:
   (a) Mailed to the office [department] by first class mail, postage prepaid, to the correct address and postmarked by the due date; or
   (b) Received in the office [department] by hand-delivery on or before the due date.

Section 3. Late Fine. (1) If the Form CG-DIS/CMD required by Section 1 of this administrative regulation is not submitted when due, a fine of twenty-five (25) dollars per day, not to exceed two thousand five hundred ($2,500) dollars per quarter, shall be imposed on the licensed distributor until the report has been received by the department.

   (2) The report shall be considered submitted when due if:
   (a) It has been mailed:
      1. To the department by first class mail;
      2. Postage prepaid; and
      3. To the correct address; and
   (b) It has been received by hand-delivery on or before the due date;

   (3) The fine imposed in subsection (1) of this section shall be paid:
   (a) Within ten (10) days of receipt of an invoice from the department; and
   (b) By check made payable to "Kentucky State Treasurer".

Section 4. [A licensed distributor's failure to file the reports required by this administrative regulation, or to pay late fines assessed for failure to timely file reports required by this administrative regulation, shall constitute grounds for revocation or denial of license; ]

Section 4. [A licensed distributor's failure to file the reports required by this administrative regulation, or to pay late fines assessed for failure to timely file reports required by this administrative regulation, shall constitute grounds for revocation or denial of license; ]


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office [Department] of Charitable Gaming, Environmental and Public Protection [and Regulation] Cabinet, 132 Brighten Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighten Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at AFRS, February 13, 2006)

820 KAR 1:028. Late quarterly report filings [fine].

RELATES TO: KRS 238.530, 238.550(5), 238.555, 238.560, 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), [238.590(5), 238.590(6), 238.646(5), 238.686(5), 238.690(5)] 238.650(3); 508.670(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.550(3) authorizes the office to take administrative action against any person for any violation of the provisions of KRS Chapter 238 and the regulations promulgated thereunder. This administrative regulation establishes that a late quarterly report filing shall be considered a violation [the late fines for filing the quarterly report or paying the required fee late, or for failure to file the quarterly report or pay the required fee].

Section 1. Late Filings. If the quarterly report or any portion thereof is not filed when due, or if any required fee is not remitted when due, it shall be a violation and subject to disciplinary action under KRS 238.550(3), [fine]. (1) If the quarterly report or any portion thereof is not filed when due, and if any required fee is not remitted when due, the penalty shall be as follows:

   (a) For the first offense, a fine of twenty-five (25) dollars per day, not to exceed two thousand five hundred ($2,500) dollars per quarter, [shall] be imposed on the licensee until the complete quarterly report and any required fee has been received by the office;

   (b) For a second or subsequent offense within the previous twenty-four (24) months, a fine of one hundred ($100) per day, not to exceed $1,000 dollars per quarter, [shall] be imposed on the licensee until the complete quarterly report and any required fee has been received by the office;

   (c) For a third or subsequent offense within the previous twenty-four (24) months, the licensee shall be suspended or revoked.

   (2) The fine imposed in subsection (1) of this section shall be paid:

      (a) Within thirty (30) [ten (10)] days of receipt of an invoice from the office; and

      (b) By check made payable to "Kentucky State Treasurer", if the licensee is a charitable organization the check shall [must] be drawn on the gaming account.

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighten Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:029. Facility licensees.

RELATES TO: KRS 238.552(3), 238 555
STATUTORY AUTHORITY: KRS 238.515(2),(4), (9), [238.530(3)], 238.552(2), (3), (5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) requires the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities. KRS 238.555(2) requires applicants for a charitable gaming facility license to complete a required application, and KRS 238.555(1) requires the office to establish a licensing fee not to exceed $2,500. This administrative regulation establishes the fees and procedures for the licensing of facilities.

Section 1. Application for Licenses. (1) An applicant for a facility license shall submit a complete, accurate, and verifiable application on Form CG-4, Application for a Facility License, at least sixty (60) days prior to the expiration of its license or expected date of the operation of the facility.

(2) An application shall not be considered complete until all deficiencies are resolved to the satisfaction of the office.

(3) If in the event the applicant does not file a written response to a [respond to any] deficiency request within thirty (30) days or does not provide a requested document, the application shall be deemed withdrawn.

(4) Once the office has received a complete application, it shall grant or deny the license within sixty (60) days.

(5) The office shall [may] issue a license if the applicant has met the requirements for licensure set forth in KRS 238.555, paid all fees and fines, filed all reports required, filed an acceptable financial plan, if required, and complied with all terms and conditions of any applicable settlement agreement or probationary terms.

(6) Fingerprints shall be required for: [6] For facility applicants, the persons required to be fingerprinted are the chief executive officer, the chief financial officer, and anyone with a ten (10) percent or greater financial interest in the licensee.

(7) In the event of a denial, the office of a license applicant on the appeal shall be prohibited from re-applying for a period of one (1) year from the date of denial.

Section 2. Information Required on License. Licenses issued by the Office of Charitable Gaming shall clearly state the:

(1) Name of the licensee;
(2) Physical address of the licensee;
(3) Address of the gaming facility, if different;
(4) Date of issuance of the license;
(5) Expiration date of the license;
(6) Type of license issued [facility]; and
(7) Address of the Office of Charitable Gaming.

Section 3. Fees for Licensure. (1) The annual license fee for a charitable gaming facility having no more than eighteen (18) sessions per week shall be $2,500. The annual license fee for a charitable gaming facility having no more than eight (8) sessions per week shall be $1,250.

(2) A nonrefundable processing fee of twenty-five (25) dollars shall:

(a) Accompany each application for licensure; and
(b) Be credited against the amount of the annual license fee. The twenty-five (25) dollars processing fee shall be credited to any balance due on the license at issuance.

(3) An annual license shall not be issued until the annual license fee is paid in full.

(4) The annual license shall be effective for one (1) year from the date of issuance.

(5) A facility license shall be issued based on location of the gaming facility.

Section 4. Requirements of Licensees. (1) Any payment from an owner, officer, employee, or member of the immediate family of an owner, officer, employee, or employee of a licensed charitable gaming distributor to an owner, officer, employee, or member of the immediate family of an owner, officer, employee of a licensed facility shall be considered prima facie evidence of violation of KRS 238.565(3)(b).

(2) An owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming distributor shall not own, operate, or be employed by the concession stand in a charitable gaming facility. Whether the concession stand is operated by the facility or an independent contractor.

(3) If a licensed organization also possesses a facility license and rent is charged to other organizations that game in the facility, the facility shall charge its own organization rent equivalent to the amount it would charge another organization for each session. The rent by the session is not to exceed $2,500. The administrative regulation establishes the fees and procedures for the listing.

(4) [4] A facility shall be permitted to list the names, license numbers, and gaming sessions of the organization that game in the facility on the facility Web site if [provided] there is no charge to the organizations for the listing.

(5) If a licensed charitable gaming organization contracts with a facility to operate the concession stand, the members of that organization that volunteer at the concession stand may volunteer for their own gaming session, but shall [may] not volunteer for the game of any other organization that games at that facility.

(6) A facility shall maintain a separate bank account for the facility operation that is not commingled with a personal account or another business account. If the licensee owns multiple facilities, a separate bank account shall be maintained for each. If separate businesses are operated out of the facility including a check cashing service or a concession stand, each business shall have a separate account.

(7) Any payments received from a licensed charitable gaming organization shall be by check drawn on the charitable gaming account or electronic fund transfer from the charitable gaming account.

Section 5. Incorporation by Reference. (1) Form CG-4, "Application for a Facility License (2006 [06/06]) is incorporated by reference.

(2) This material form may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Protection Cabinet, 323 Brighton Park Boulevard, Frankfort, Kentucky 40601. Monday through Friday [0601-26328, 6 a.m. to 4:30 p.m. Monday through Friday.]

CHRISTOPHER L. LILLY, Commissioner and Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Protection Cabinet, 323 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.
VOLUME 32, NUMBER 9 - MARCH 1, 2006

ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)


RELATES TO: KRS 238.535(1)-(7), 238.545(1), (2)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.535(1), (2), 238.545(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: [KRS 43A:410 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is deemed that it no longer be effective.] This administrative regulation repeals 820 KAR 1:030, 1:040, and 1:070, which are no longer required, because the requirements are duplicated in 820 KAR 1:032, 1:034, 1:036, 1:042, 1:044, 1:046, and 1:005. The administrative regulations were moved and separated for ease of administration and understanding by the regulated community. This administrative regulation also repeals 820 KAR 1:020, because its provisions duplicated KRS 238.535.

Section 1. The following administrative regulations are hereby repealed:
(1) 820 KAR 1:020, Conduct of hearings;
(2) 820 KAR 1:030, Charity game ticket standards;
(3) 820 KAR 1:032, Evening occupations licence; and
(4) 820 KAR 1:070, Exempt activities.

CHRISTOPHER L. LILLY, Commissioner and Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighthorn Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5526, fax (502) 573-6625.

ENVIROMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2005)

820 KAR 1:032. Pulltab construction.

RELATES TO: KRS 238.505(6), 238.545(1), (2)
STATUTORY AUTHORITY: KRS [238.608(2)] 238.515(2), (4), (9), 238.545(1), (2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the office to establish standards for pulltab construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of pulltabs.

Section 1. Conformity of Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those pulltabs conforming to the requirements of this administrative regulation.
(2) A licensed charitable organization shall sell to the public only those pulltabs conforming to the requirements of this administrative regulation.

Section 2. Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winning propositions cannot be observed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.
(2) The deal shall be designed, printed, glued, cut and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.
(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period.
(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.
(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs [ticket] through variations in printing graphics or colors, including those involving different printing plates.
(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numerical jar tickets with colored winning numerals shall not be [are not] required to have secondary winner protection.
(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or deterioration of the pulltab. For bonded tickets, the glue shall [must] be of sufficient strength and quality to prevent the separation of the band from the ticket.
(8) The window sits on each break open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.
(9) Except as provided in subsection (10) or (11) of this section, the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (25) square inches or more shall [must] be:
   (a) The name of the manufacturer, or its distinctive logo,
   (b) The name of the game,
   (c) The manufacturer's form number;
   (d) The price per individual pulltab;
   (e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and
   (f) The number of winners and respective winning numbers or symbols, and specific prize amounts.
(10) A pulltab with an overall area of at least one and six tenths (1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall:
   (a) Have printed on it, at a minimum, the information listed in subsection 9(a), (b), (c), (d), and (e) of this section; and
   (b) Be required to have the information listed in subsection (10) of this section.
(11) A pulltab with an overall area of less than one and six tenths (1.6) square inches unopened is not required to contain the information in subsection (9)(a), (c), (d), and (f) of this section.

Section 3. Randomization. Winning pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern among deals, or subsets of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly [evenly] distributed throughout the deal [in a random fashion]. Banded tickets packaged in bags, rather than boxes, shall be [are also] subject to these requirements.
Section 4. Packaging and Distribution. (1) Each deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed [must be of such construction as] to guarantee that, if [should] the container [is not opened or otherwise tampered [taped] with] evidence of the opening or tampering will [would] be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box or other container is recovered by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall [must] be completely heat-sealed. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box or other container;

or

(b) On the inside of the deal's package, box or other container if it is clearly visible from the outside of the package, box, or other container.

(3) (a) Manufacturers shall [must] print on or affix to the outside of the package or container of pulltabs or include inside the package or container. In bold print of sufficient size to be easily read, a message that states substantially the following: "Carefully read the game instructions. The game tickets must be removed from this package and thoroughly mixed prior to sale to the public."

(b) Manufacturers shall [must] include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number and the game serial number. The bar code label shall [must] be visible from the outside of the package, box, or other container.

Section 5. Flames and Seal Cards. (1) Every deal of pulltabs shall contain a flame or a seal card that has printed [or affixed] on it, by the manufacturer, the following information:

(a) The name of the game;

(b) The manufacturer's name or logo;

(c) The manufacturer's form number;

(d) The game serial number;

(e) The ticket count;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative, [or] carryover or progressive prize; and

(g) The cost per play; and

(h) Every deal of pulltabs shall contain

 instructions on how to play the game.

Section 6 Cumulative Games and Carryover[,] or Progressive Games. (1) The amount dedicated to the cumulative prize pool, or the carryover[,] or progressive jackpot shall [must] be predetermined by the manufacturer and built into the payout structure for the game. The dedicated amount shall [must] be printed by the manufacturer on either the flame or seal card for each game or on each ticket in each game.

(2) All games contributing to the cumulative prize pool, or the carryover[,] or progressive jackpot shall [must] be of the same form number.

(3) The flame or seal card for the [cumulative,] carryover[,] or progressive jackpot shall contain an area in which the current amount of the [cumulative,] carryover[,] or progressive jackpot can be posted.

(4) The flame or seal card for the cumulative, carryover[,] or progressive jackpot shall contain instructions on how the prize is to be awarded when the jackpot reaches the maximum prize limit.

(5) If a [cumulative,] carryover[,] or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall [must] contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

Section 7. Event Games. (1) An [No] event game shall not [may] contain a "last sale" feature.

(2) The number of winners and the prize amounts shall [must] be built into the payout structure for the game by the manufacturer.

(3) An [No] event ticket prize shall not [may] exceed the individual ticket prize limit for a pulltab game.

(4) The prize for an event pulltab game shall not be considered a bingo prize.

Section 8. Multipackaged Pulltab Deals. Every package shall [must] be played for the deal to show the stated profit. Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 9. Tracking by Manufacturer. Every manufacturer of pulltabs shall maintain records sufficient to track each deal of pulltabs [pulltabs], by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

Section 10. Tracking by Distributor. (1) Every distributor of pulltabs shall maintain records sufficient to track each deal of pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

(2) For sales in the Commonwealth of Kentucky, or for residents of Kentucky, the records required under this section shall be deemed sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.

(3) For sales outside the Commonwealth of Kentucky to nonresidents of Kentucky, the records required under this section shall be deemed sufficient if the distributor records the name, address, date of birth, and state identification number of the purchaser at the next point of sale [The records required under the section shall be deemed sufficient if the distributor records the name and address of the person who purchased the pulltabs at the next point of sale, or]

(a) Makes and retains a copy of a state identification card which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

Section 11. Requirements of Distributor Invoice. (1) Distributors selling pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

(a) The purchaser's name, address, and license number;

(b) The address to which the shipment was delivered;

(c) The date of sale or credit;

(d) The conditions of the sale or credit;

(e) The quantity of pulltabs sold including the number of the deals, the name of each deal, the tickets per deal and the serial number and form number of the deal;

(f) The total invoice amount;

(g) The name of the person who ordered the supplies;

(h) The name of the person making the delivery;

(i) The date of delivery or date item was picked up for sale or credit;

(j) The place or manner of delivery; and

(k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver pulltabs to an agreed place or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the office.

Section 12. Defects. (1) If a defect in packaging or construction of a pulltab is discovered by an organization, the defect, or replace the defective items, shall be reported to the distributor within
fifteen (15) days. The distributor shall correct the defect within a reasonable time, if possible.

(2) A list of defects in packaging or construction of a pulltab reported to a distributor shall be reported to the office by each distributor on the quarterly report.

(3) If the office, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the office shall (may), with respect to pulltabs for use in Kentucky, require the manufacturer to:

(a) Recall the pulltabs affected that have not been sold at retail to licensed organizations; or

(b) Issue a total recall of all affected deals.

(4) In choosing and directing a particular recall in accordance with subsection (2) from subsection (3) of this section, the office shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;
(b) Whether the defect affected game security;
(c) Whether the defect affected game playability;
(d) Whether the defect was limited to a specific number of deals of a particular form number;
(e) Whether the defect was easily detectable by a charitable [gaming] organization;
(f) Whether the defect was easily detectable by members of the general public;
(g) Whether the defect threatens public confidence in the game;
(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(5) In consultation with the manufacturer, the office shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighthaven Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6828.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:034. Pulltab dispenser construction.

RELATES TO: KRS 238.505(5), 238.545(1), (2)
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(1)(e) requires the office to establish standards for the use and control of pulltab dispensers. This administrative regulation establishes standards for the use and control of pulltab dispensers.

Section 1. Approval of an Automated Pulltab Dispenser. (1) An automated pulltab dispenser shall not be sold, leased, or otherwise furnished to any person in the state unless it has been approved by the office.

(2) Before approval by the office, a dispenser which is identical to the dispenser intended to be sold, leased, or otherwise furnished shall be certified by an independent testing laboratory that the dispenser satisfies the manufacturing requirements established in Section 2 of this administrative regulation [set forth in subsection (2) of this section].

(3) If granted, approval shall extend only to the specific dispenser model approved, and any modification shall first be approved by the office.

Section 2. Requirements for Automated Pulltab Dispensers. (1) Each pulltab dispenser shall:

(a) [a] Contain a three (3) prong ground and surge protector, and shall be capable of withstanding static electricity;
(b) [e] Accommodate pulltabs of different sizes;
(c) [e] Be constructed so that customers can see how many pulltabs remain within the dispenser, or have resetable counters visible to the customer indicating the number of pulltabs left in each column of the dispenser;
(d) [a] Have an outlet or tray to catch dispensed pulltabs;
(e) [a] Accurately dispense the correct number of pulltabs;
(f) [a] Contain one (1) or more player buttons on the front of the dispenser to dispense pulltabs if pressed;
(g) [a] Contain a laminated electronic display to display the value of money deposited;
(h) [a] Be capable, if a malfunction occurs or the electrical power is interrupted after the money has been validated, of accurately redisplaying the value of the money after the malfunction or power is restored;
(i) [a] Not dispense any credits, or validate, read, or redeem a winning pulltab;
(1) [a] If using bill acceptors or similar devices that do not return change, clearly disclose that fact to the customer;
(1) [a] Not have a video screen or produce audio sounds except for security alarms;
(2) [a] Not resemble a slot machine or other gambling device;
(3) [a] Contain the manufacturer's name, dispenser's serial number and model number, and date of manufacture, all of which shall be permanently affixed to the side of the dispenser;
(4) [a] Have an on/off switch in an inconspicuous location on the exterior of the dispenser;
(5) [a] Not record test sales of pulltabs or money acceptances on the dispenser's accounting meters;
(6) [a] Contain a nonresettable accounting meter for total money validated and for the total of pulltabs dispensed and shall be capable of retaining this information for six (6) months after power has been disconnected;
(7) [a] Contain an EPROM microchip which holds the dispenser's programming code and which is identical in all respects to the manufacturer's EPROM microchip approved by the office;
(8) [a] Contain a RAM, or an EPROM microchip equipped with a RAM microchip, which shall maintain the same information as required in subsection (7) [paragraph (e)] of this section [subsection (2)];
(9) [a] Contain an EPROM microchip which holds the dispenser's programming code which is identical in all respects to the manufacturer's EPROM microchip approved by the office;
(10) [a] Automatically discontinue operation if any nonresettable accounting meter, RAM microchip, or an EPROM microchip is disconnected; and
(11) [a] Contain at least one (1) electronic money validator which shall:
(1) [a] Only validate United States money;
(2) [a] Not validate money in denominations in excess of twenty (20) dollars;
(3) [a] Transmit the value of validated money to the pulltab dispenser;
(4) [a] Be equipped with mechanisms to ensure that pulltabs will not be dispensed unless the money is validated and retained;
(5) [a] Be capable of preventing acceptance of known counterfeit money;
(6) [a] Return any invalid money to the player;
(7) [a] Have at least one (1) removable stacker box capable of stacking bills or a removable drop box contained in a separate locked compartment; and
(8) [a] Automatically discontinue accepting or validating money if a malfunction occurs or if electrical power to the dispenser or currency validator is interrupted.

Section 3. Automated Pulltab Dispensing Limitations. (1)(a) A
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TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
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CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environment and Public Protection Cabinet, 132 Brighthorn Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)


RELATES TO: KRS 238.505(3), 238.545(1), (2)
STATUTORY AUTHORITY: KRS 238.505(3), 238.515(2), (9), 238.545(1), (2)
NEXCESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the office to establish standards for pulltab rules of play. This administrative regulation establishes standards for the play of pulltabs.

Section 1. General Provisions. (1) All individuals involved in any way in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The charperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds. [The employer shall not be compensated.] (3) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled [secured].

(5) No one shall volunteer for more than four (4) gaming occasions a week. Charity fundraising events are not included in the limitation.

(6) Anyone employed by the organization to perform janitorial, security, or bookkeeping duties shall not purchase or play pulltabs nor volunteer for any activities associated with that organization's gaming.

(7) Except for a charity fundraising event, a volunteer at any other charitable gaming occasion at which pulltabs are sold shall not purchase or play pulltabs at that occasion. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer did not work, and from a deal the volunteer did not sell.

(8) (a) House rules. If the charitable organization has house rules concerning its gaming occasion, the house rules shall:

(a) Be posted in at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming occasion;

(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1.

(c) Be followed; and

(d) Include the organization's name and license number if a charitable organization has "house rules" concerning its gaming occasion, the rules shall be posted in at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming occasion, or be listed on the program, and kept with the gaming occasion records. The "house rules" shall not conflict with statutes or administrative regulations. The "house rules" shall be followed. The "house rules" shall include


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Section 2. Playing. (1) The flare or seal card, including a progressive jackpot [seal] card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative-, carry over, or progressive- prizes, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Pulltabs shall not be sold to the public from the original packaging box or container. Pulltabs shall be removed from the original box or container and mixed together prior to sale.

(3) If a deal of pulltabs is packed in more than one [box or container, an] (e) individual container shall not [may] designate a winner or contain a disproportionate number (greater than one) of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subset[s] may be placed out for play in succession (received in two or more boxes, package or containers, all of the pulltabs from each box, package, or container shall be placed out for play at the same time. Those container shall designate the winner).

(4) Pulltabs which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public, or affect the chances of winning or losing shall not be placed into play. The organization shall notify the Office of Chaltable Gaming of the existence of these (seal) tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal do not match the serial number on the flare or seal card accompanying the deal, the organization shall not place the deal into play and shall notify the distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the office in writing (and shall notify the distributor in writing within fifteen (15) days). [For instructions on checking serial numbers in progressive pulltab games, see Section 6 of the administrative regulation.]

(6) Any licensed charitable organization (organizations) which sells, [sell] pulltabs from its office location or from a pulltab dispensers shall comply with 220 KAR Chapter 1 (all the rules) regarding the play, and proper record-keeping and reporting of those sales. The [Sale] sales shall be reported on the quarterly report.

(7) (a) If a deal is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal closed or completed, declare the winners and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained as required in subsection (14) of this section.

(c) If no winning pulltabs remain in the deal, the licensed charitable organization shall consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs as required in subsection (14) of this section.

(d) A [No] licensed charitable organization shall not complete play of a deal or a seal card it did not initiate.

(e) A pulltab shall not be sold to the public at a price different than that printed by the manufacturer of the pulltab upon the flare or seal card which accompanies the deal.

(9) Only [An] authorized representatives [representative] of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs received.

(10) If playing pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation [may not match the serial number on the progressive jackpot card if the deal is the second or subsequent deal played in the progressive pulltab game. However, the serial number of the ticket shall match the seal card accompanying the deal. For instructions on checking serial numbers in progressive pulltab games, see Section 6 of this administrative regulation.]

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal of tickets. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the flare or seal card the prize structure to be awarded before placing the deal into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid no later than five (5) days from the date of redemption.

(14) All winning pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15) (a) The charitable organization shall retain, for a period of twelve (12) months, to allow auditing by the staff of the office.

1. All winning pulltabs with a prize value of fifty (50) dollars and above;

2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;

3. All seal cards with a prize value of fifty (50) dollars and above;

4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) The pulltabs, flares, prize boards in cumulative games, and seal cards shall be disposed of by burning, shredding, destroying, or disposing in some manner to prevent reuse of any pulltab, flare [All winning pulltabs with a prize value of fifty (50) dollars and above, the flare from all winning pulltabs with a prize value of fifty (50) dollars and above, all seal cards] and winners [with a prize value of fifty (50) dollars and above, all prize boards in cumulative games with a prize value of fifty (50) dollars and above, and all unsold pulltabs shall be retained by the charitable organization for a period of twelve (12) months to allow auditing by the staff of the office. The pulltabs, flares, prize boards in cumulative games, and seal cards shall be disposed of by burning, shredding, destroying, or disposing in some manner to prevent reuse of any pulltab, prize board, or seal card or any portion thereof.

(c) The fair market value of bingo paper, a card-minding device, or each pulltab [be pulltab] given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, or pulltab at that gaming occasion.

(d) If bingo paper is given away as a promotional item or a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(16) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. [Name] the date on which it was awarded; and

3. The date on which it was redeemed; and

4. The amount of bingo paper given in exchange for the voucher; and

5. [An] The serial number of the bingo paper.

(e) Once the voucher is completed, it shall be redeemed for the bingo paper.

The organization shall retain the voucher with its session records.

(18) If a card-minding device is given away as a promotional item or a merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with;
1. The name, address, and phone number of the patron redeeming the voucher;
2. The date on which it was awarded;
3. The date on which it was redeemed; and
4. The number of card-minding devices and the number of faces loaded on each device given in exchange for the voucher.

Once the voucher is completed, it shall be redeemed for the card-minding devices.

The organization shall retain the voucher with its session records.

(a) If a pulltab is given away as a promotional item or a door prize, or a bingo prize, the patron shall be given a voucher
(b) The voucher shall be completed with:
1. The name, address, and phone number of the patron redeeming the pulltab;
2. The date on which it was awarded;
3. The date on which it was redeemed; and
4. The name, serial number, form number, and amount of the pulltab(s) given in exchange for the voucher.

Once the voucher is completed, it shall be redeemed for the pulltabs.

The organization shall retain the voucher with its session records.

(a) If a pulltab is given away as a promotional item or a bingo prize, the person in charge of bingo payouts shall complete a voucher.
(b) The voucher shall include:
1. The name and serial number of the pulltab game and the number of pulltabs awarded; and
2. The printed name and signature of the person in charge of bingo payouts.

The organization shall retain the voucher with its pulltab receipt records.

Vouchers shall be redeemed on the same day as awarded. All tickets from a deal have been sold; and all the winning tickets from a deal have been sold; and all the lines on the sign-up card have been filled; and
4. The deal has been closed, because no future date is anticipated.
5. Each winning combination. When all tickets from a deal have been sold, or when all the winning tickets from a deal have been sold, or when all the lines on the sign-up card have been filled, or when the deal has been closed, because no future date is anticipated, the deal shall be closed or torn open, in plain view of all present.

The specific form number, the name of the game, and the serial number of the deal shall be announced and posted at the location of the game.

The date the seal was opened shall be recorded on the seal card. If the gaming location uses monitors, the seal card must be displayed in the monitor.

Section 5. "Last Sale" Pulltabs. "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 6. Seal Card Games with [Cumulative, Carry Over, or Progressive Prizes. (1) Each progressive jackpot prize pool for a progressive pulltab game shall be established only through the play of deals of the same game which bear a manufacturer's form number identical to the form number of any previously-played deals contributing to the prize pool.

(2) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial numbers on the pulltab tickets may not match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until [week-time-as the progressive jackpot prize pool is determined. If the [week] game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the [week] game is begun at the office location, it shall be offered on each succeeding day their office is open.

(4) Prizes shall be awarded only in accord with the manufacturer's predetermined prize structure for the game.

(5) The seal card for each deal in a progressive game shall include, in addition to all other information required or allowed on pulltab cards, the amount dedicated to the progressive jackpot prize pool.

(6) Every seal card for each deal that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot (week) card, shall be kept available for viewing at the location of the game at all times while the game is in play, until [week-time-as the progressive jackpot prize is won.

(7) The serial numbers for each deal contributing to a [cumulative, carryover, or progressive jackpot prize shall] must be recorded in the gaming occasion record (and a list of those serial numbers shall be attached to the back of the jackpot prize card when the prize is awarded).

(8) A progressive or carryover pulltab game shall (must) be played in accord with the manufacturer's specifications for the determination of a winner.

(9) As long as money remains in the jackpot prize pool, the organization shall continue to play the same games with the same form number.

(10) If no prize remains in the jackpot prize pool, the organization shall continue to play the same games with the same form number.

(11) If a game bearing the same manufacturer's form number is no longer available, the organization shall contact the office for instructions on how to proceed. (10) If a prize reaches $3,000 without a winner, the prize must be awarded in accord with the manufacturer's specifications for the determination of a winner upon accumulation of the maximum amount.

(11)(a) If a progressive or carryover pulltab game shall (must) be played in accord with the manufacturer's specifications for the determination of a winner.

(12) A progressive or carryover pulltab game shall (must) be played in accord with the manufacturer's specifications for the determination of a winner.

(13) A progressive or carryover pulltab game shall (must) be played in accord with the manufacturer's specifications for the determination of a winner.

(14) A progressive or carryover pulltab game shall (must) be played in accord with the manufacturer's specifications for the determination of a winner.

(15) A progressive or carryover pulltab game shall (must) be played in accord with the manufacturer's specifications for the determination of a winner.

(16) A progressive or carryover pulltab game shall (must) be played in accord with the manufacturer's specifications for the determination of a winner.
a progressive pulltab game unless the serial number on the winning ticket matches the serial number on a seal card from a deal of tickets which contributed to the jackpot prize.

12. An organization shall attach a copy of the valid state identification card which contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

13. The jackpot prize in a progressive game may (may) accrue in excess of $2,400 dollars. An [However, no] individual jackpot prize shall not [may] be paid in excess of $2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot gained forward to the next session at each gaming occasion shall be recorded in the gaming occasion record.

14. Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool as long as it also includes the statement that the individual payout shall not exceed $2,400.

15. [14] A licensed charitable organization shall report to the office concerning its play of seal card games with a progressive prize on the quarterly report.

16. The jackpot prize pool in a progressive game shall be considered paid an accumulated gross receipt that shall be deposited within two [2] business days of the gaming occasion.

Section 7. Seal Card Games with Cumulative Prizes. (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals of the same game which bear a manufacturer's [manufacturer's] form number identical to the form number on any previously played deals contributing to the prize pool.

(2) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the face, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until [each time as] the cumulative prize pool has been awarded. If such game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the [each] game is begun at the office location, it shall be offered on each succeeding day their office is open.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's pre-designated prize structure for the game.

(5) The seal card for each deal in a cumulative pulltab game shall show, in addition to all other information required for prizes and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed [or kept—available for viewing at the location of the game] at all times while the game is in progress until [each] the cumulative prize pool is awarded.

(7) The serial numbers for each deal contributing to a cumulative prize shall [must] be recorded in the gaming occasion records.

(8) An organization shall not award the cumulative prize pool unless the serial number on the winning ticket matches the serial number on a seal card from a deal of tickets which contributed to the cumulative prize pool.


10. A licensed charitable organization shall report to the Office concerning its play of seal card games of cumulative games on the quarterly report.

TOMY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Epperson Park Blvd, Frankfort, Kentucky 40601, phone (502) 573-5628, fax (502) 573-6628.
shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:
(a) The purchaser's name, address, and license number;
(b) The address to which the shipment was delivered;
(c) The date of sale or credit;
(d) The conditions of the sale or credit;
(e) The quantity of bingo paper sold including the number of sheets or packs in a set;
(f) The serial number of the bingo sets sold;
(g) The series number of the bingo sets sold;
(h) The cut of bingo paper sold;
(i) The color of bingo paper sold;
(j) The total invoice amount;
(k) The name of the person who ordered the supplies;
(l) The name of the person making the delivery;
(m) The date of delivery or date item was picked up for sale or credit; and
(n) The place or manner of delivery, including the name and signature of the person taking delivery, if any.
(2) A distributor may deliver bingo paper to an agreed place or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge shall be made in writing to the distributor and a copy shall be sent to the office.

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:044. Bingo equipment.

RELATES TO: KRS 238.515(2), (9), 238.530, 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.545(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the office to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the office to establish charitable gaming standards. KRS 238.545(1)(b) requires the office to promulgate an administrative regulation concerning use and control of card-minding devices. This administrative regulation establishes standards for the construction and distribution of bingo equipment including standards relative to card-minding devices.

Section 1. Selection and Display Devices. (1) Bingo ball machines and other selection devices, flashboards and other display devices, and other bingo equipment used in the selection and display of game numbers shall be made available for inspection or testing by the office at any reasonable time.
(2) Equipment referenced in subsection (1) of this section shall be designated to produce randomness and be free of any defects when used in a bingo game.
(3) An organization shall not use a selection or display device with a defect that was apparent at the beginning of the session. All bingo balls used in the machine or other device shall:
(a) Be of the same size, shape, weight, and balance;
(b) Have all other characteristics that control their selection the same; and
(c) Be clean and free of defects that could affect the game.
(4) If a selection or display device develops a defect during a session, the session shall only be stopped if the defect affects the integrity of the game.

Section 2. Card-minding Devices. (1)(a) A card-minding device and associated site system shall not be sold, leased, or otherwise furnished to any person for use in the conduct of bingo until it has first been tested and approved by an independent testing facility, demonstrated to the office by the manufacturer if requested, and approved by the office.
(b) For a hand-held card-minding device, a device which is identical to the one (1) Intended to be sold, leased, or otherwise furnished to any person for use in the conduct of bingo shall be tested and approved.
(c) For a fixed-base card-minding device, a device which contains identical software to the fixed-based card-minding device intended to be sold, leased, or otherwise furnished shall be tested and approved.
(2) The testing facility shall be approved by the office and the device and software shall be submitted at the manufacturer's expense. The independent testing facility shall ensure that the device and proprietary software conform to the restrictions and conditions set forth in this administrative regulation.
(3) Any modifications to a hand-held card-minding device or the software in a fixed base card-minding device shall be tested and approved by an independent testing facility, demonstrated to the office by the manufacturer if requested, and approved by the office.
(4)(a) The office, in consultation with the independent testing facility [lab], shall determine if [whether] all proprietary software and card-minding devices required to be tested by this administrative regulation, as well as other components of card-minding device systems, conform to the requirements and restrictions contained in this administrative regulation.
(b) Once the office has received the test results from the independent testing facility [lab], the office may request a demonstration of the product within thirty (30) days.
(c) The office shall either approve or disapprove the submission and inform the manufacturer of the results within thirty (30) days of the demonstration.
(5) Manufacturers may conduct routine maintenance activities and replace secondary components of a card-minding device system without prior office approval or additional testing as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played.
(6)(a) If the office detects or discovers any problem with a card-minding device system that affects the security or the integrity of the bingo game or the card-minding device system, the office shall direct the manufacturer, distributor, or charitable organization to cease the sale, lease, or use of the card-minding device system until the problem is corrected.
(b) The office shall require the manufacturer to correct the problem or recall the card-minding device system immediately upon notification by the office to the manufacturer.
(c) If the manufacturer, distributor, or charitable organization detects or discovers any defect, malfunction, or problem with the card-minding device system that affects the security or the integrity of the bingo game or card-minding device system, the manufacturer, distributor, or charitable organization shall immediately notify the office.
(7)(a) Distributors and charitable organizations shall not add or remove any software programs to an approved card-minding device system without the permission of the manufacturer.
(b) If the office detects or discovers a card-minding device system at a playing location that is using components or software that were required to have been approved by the office but have not been approved, the card-minding device system shall be determined to have an unauthorized modification and the use of the system shall cease immediately.

Section 3. Requirements for the Manufacturer of Card-minding Device Systems. (1) Manufacturers of card-minding device systems shall manufacture each site system to include a point of sale station and an internal accounting system that is capable of recording the charitable organization's sale of all charitable gaming
supplies.

(2) (e) Manufacturers of card-minding device systems shall ensure that the site system has dial-up capability, so that the office has the ability to remotely verify the operation, compliance, and internal accounting systems of the site system at any time. The office shall be given access to the site system at any time. The office shall be given access to the site system at any time.

(b) The manufacturer shall provide to the office all current protocols, passwords, and any other required information needed to access the system prior to the operation of the system within Kentucky.

(c) The office shall be notified of any changes in the protocols, passwords, and any other required information needed to access the system within ten (10) days of (at least ten (10) days prior to) the change.

(d) Any reports maintained or generated by the card-minding device system shall be capable of being downloaded or otherwise accessed via the modem.

(3) Manufacturers of card-minding device systems shall manufacture each site system to ensure that an internal accounting system is capable of recording and retaining for a period of not less than twelve (12) months:

(a) The serial number of each bingo face sold for card-minding device use;

(b) The price of each face or package sold;

(c) The total amount of the card-minding device sales for each session;

(d) The total number of faces sold for use with card-minding device for each session;

(e) The serial number of each hand-held card-minding device sold; and

(f) The terminal number or account number associated with each fixed base card-minding device sold.

(4) (a) The information referenced in subsection (3) of this section shall be secure and shall not be accessible for alteration during the session.

(b) The site system shall have report generation software with the capability to print all information required to be maintained on the site system's active or archived databases. Effective October 1, 2006, the total sales activity report shall be completed in the format of Form CG-CMD. The report shall be in a form prescribed by the office. The office shall make no changes to the form without giving the manufacturer sixty (60) days notice.

(5) Manufacturers of card-minding device systems shall manufacture each site system to ensure that the applicable point of sale station is capable of printing a receipt for each sale or void of a card-minding device. The receipt shall include the following information:

(a) The date and time of the transaction;

(b) The dollar value of the transaction and quantity of associated products;

(c) The sequential and consecutive transaction number;

(d) The session in which the product was sold; and

(e) The serial number of each hand-held card-minding device sold; and

(f) The terminal number or account number for each fixed base card-minding device sold.

(6) Card-minding device systems may include player tracking software. Player tracking records shall at all times be the property of the charitable organization and neither the manufacturer nor the distributor shall utilize or make available to any person, other than the office as otherwise authorized by law, the information contained within the player tracking software without the express permission of the charitable organization.

(7) Manufacturers of card-minding device systems shall manufacture each associated site system to include a caller station verifier that is able to verify winning cards and to print the cards for posting. The caller station verifier shall be capable of posting all cards called for verification purposes and printing an ordered list of the called balls.

(b) (a) The card-minding device systems shall employ sufficient security safeguards to allow verification that all proprietary software components are authentic copies of the approved software components and all functioning components of the card-minding device system are operating with identical copies of approved software programs.

(b) The system shall have sufficient security safeguards to ensure that any restrictions or requirements authorized by the office or any approved proprietary software are protected from alteration by unauthorized personnel.

(9) Examples of security measures that may be employed to comply with these provisions include the use of dongles, digital signature companion hardware and software, secure boot loaders, encryption, and key and callback password systems.

(10) Manufacturers of card-minding device systems shall ensure that a card-minding device shall [does] not allow any bingo cards or faces other than those venitably purchased by the patron to be available for play.

(11) A manufacturer shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, or tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(12) The card-minding device system shall provide password protection for each organization.

(13) The card-minding device system shall erase, deactivate, or render unplayable the electronic faces on each card-minding device prior to the next scheduled bingo occasion.

(a) Upon turning off the device after the last bingo game of the occasion has been played or upon placing the device into a charging unit and

(b) By a [legal] secondary timing method established by the manufacturer [and approved by the office].

(14) The card-minding device system shall ensure that the patron shall [must] purchase additional electronic bingo faces at the site system and that additional faces shall not [can] be purchased from the floor.

Section 4. Tracking by Manufacturer of Card-minding Device Systems. (1) Each manufacturer selling, leasing, or otherwise furnishing card-minding device systems shall maintain a single log or other record showing the following:

(a) The date of the transaction with the distributor;

(b) The model, version, and serial number of each hand-held card-minding device;

(c) The account number or terminal number of each fixed base card-minding device;

(d) The model and version number [of all components] of the site system software; and

(e) The name and license number of the distributor to whom the card-minding device system was sold, leased, or otherwise furnished.

(2) (e) Manufacturers selling, leasing, or otherwise providing card-minding device systems to distributors shall provide the distributor with an invoice or other documentation that contains, at a minimum, the following information:

(a) [1] The date of sale and the time period covered by the invoice;

(b) [2] The quantity sold or leased; and

(c) [3] The total invoice amount.

(3) The manufacturer shall maintain physical or electronic copies of the [above] documentation required by this section for a period of thirty-six (36) months.

Section 5. Distributor Requirements for Card-minding Device Systems. (1) Before initial use by a charitable organization, the distributor shall ascertain that the particular device and associated software version are [is] approved by the office for use in Kentucky.

(2) If the card-minding devices are used at multiple locations, each location shall [must] have its own separate site system.

(3) Before the complete removal [or hardware upgrade] of any card-minding device system, the distributor shall supply a copy of the data files to each charitable organization which used the card-minding device system and to the office.

(4) A distributor shall not display, use, or otherwise furnish a
card-minding device which has in any manner been marked, defaced, tampered with, or which is otherwise intended to deceive the public or affect a person's chances of winning.

(5) Each distributor selling, leasing, or otherwise furnishing card-minding device systems shall maintain a single log or other record showing the following information:
(a) The playing location name, physical address, telephone number, and facility license number; if applicable, where the card-minding device system is located;
(b) The modern number and quantity of card-minding devices at each playing location;
(c) The date the card-minding device system was installed or removed;
(d) The model, version and serial numbers or terminal numbers of the card-minding device and site system equipment;
(e) The name and license number of the charitable organization or distributor to whom the card-minding device system was sold, leased or otherwise furnished;
(f) The name and license number of the manufacturer or distributor from whom the card-minding device system was purchased, leased or otherwise obtained;
(g) Contractual leases or purchase agreements between distributors of card-minding devices and the charitable organizations or other distributor to which the devices are furnished; and
(h) The total dollar amount of card-minding device sales or lease transactions regarding each charitable organization to which card-minding devices were furnished during each calendar quarter.

(6) Distributors selling, leasing, or otherwise providing card-minding devices to charitable organizations or distributors shall provide the charitable organization or distributor with an invoice or other documentation that contains, at a minimum, the following information:
(a) [i.] The date of sale and the time period covered by the invoice;
(b) [2.] The quantity sold or leased; and
(c) [3.] The total invoice amount.

(7) The distributor shall maintain physical or electronic copies of the documentation required by this section for a period of thirty-six (36) months.

Section 6. Requirements for Charitable Organizations Using Card-Minding Device Systems. (1) Before initial use of a card-minding device system by a charitable organization, the organization shall ascertain that the particular device and associated software version have been [ii] approved by the office for use in Kentucky.

(2) A licensed charitable organization shall not display, use, or otherwise furnish a card-minding device which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(3) If a player's card-minding device malfunctions [iii] becomes inoperable] during a bingo game, it shall not be replaced while the game is in progress. It may be repaired or the face transferred to another card-minding device if it [the repair] will not interrupt the game.

(4) Each card-minding device shall be limited to offering for play a maximum of seventy-two (72) face cards during any one (1) game of a session.

(5) The charitable organization shall ensure that the card-minding device system does not allow a card-minding device to be used to obtain a bingo prize for any bingo game other than for a game within the bingo session for which the card-minding device was sold.

(6) The office may examine and inspect any card-minding device and site system. The office shall be granted reasonable immediate access to the card-minding devices and unlimited inspection of all parts of the site system.

(7) The organization shall provide the player with a receipt printed on a receipt printer for each sale detailing the transaction. The receipt shall contain, at a minimum, the following information:
(a) A unique nonresellable transaction number that is printed in continuous, consecutive order;
(b) The serial number of the card-minding device issued;
(c) The date and time the receipt was issued;
(d) The name of the charitable organization [licensee] and license number; and
(e) A description, quantity, purchase price and total dollar amount of each item(s) purchased.

(8) [i.] The organization shall void the original transaction and issue a new receipt if a player requests a partial or full refund. Additional purchases shall [do not] require voiding of the original transaction.

(9) [ii.] Voided transactions shall be treated in the following manner:
(a) Voided transactions shall be processed immediately;
(b) If a voided transaction involves a card-minding device, the card-minding device shall be connected to the site system to ensure all electronic bingo cards are erased or deactivated; [j] 
(c) The player shall [must] possess the receipt issued at the time of the purchase of the card minding device before the purchase is [may be] voided; [j]
(d) The word "void" shall be clearly printed on the receipt; [j]
(e) The player shall write his or her name, address, telephone number, signature, and amount of refund on the back of the receipt before a partial or full refund may be issued; and [j]
(f) All voided receipts shall [must] be attached to the Total Sales Activity Report printed at the end of each bingo occasion and maintained with the gaming records.

(10) [i.] If the organization loads the card-minding devices prior to selling them, all unsold card-minding devices shall be voided by the start of the second game. The organization shall not preload more than 100 devices before the start of a gaming session.

(11) [ii.] If a card-minding device malfunctions, the organization shall load the same face on another card-minding device.

(12) [iii.] If the receipt printer malfunctions or printed receipts are not legible, manual receipts shall be issued that contain the same information required by (in accordance with) subsection (7) of this section.

(13) [i.] If the office or any player requests verification of a winning card face played on a card-minding device, the session chairperson shall print the winning card face and post it in a conspicuous location where it may be viewed in detail. Winning card faces requested for posting shall remain posted for at least thirty (30) minutes after the completion of the last bingo game at that particular session.

(14) [ii.] The organization shall reasonably ensure that the dial up phone lines remain attached to the site system at all times and are operational.

(15) Any organization using a card-minding device system shall record all sales, including bingo paper (door and floor sales), disposable bingo cards, card-minding devices, and pulltab on a point-of-sale station.

(16) The organization shall record card-minding devices for a discounted price, or gives them away as a promotion, the site system shall be programmed to account for the discounted item and price separately from those sold at the regular price. A generic discount key shall not be [is not] allowed.

(17) The organization shall print a total sales activity report from the point of sale at the end of each bingo session and maintain it with the occasion records.

(18) Effective July 1, 2006, [147] a manufacturer's representative or distributor's [dealer] representative may be present only to consult, demonstrate, and train on the operation of the card-minding device system [preload or void card-minding devices or to reload the same cards to another card-minding device in the event of a malfunction of a device]. The manufacturer or distributor representative shall have a separate password from the password of the organization. Any such manufacturer or distributor representative shall perform such services at a separate looking area away from the area in which sales are made.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132
Section 1. General Provisions. (1) All individuals involved [in any way] in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds. [The chairperson shall not be compensated.]

(3) Except for Braille cards intended for use by blind players, bingo paper or card minding devices shall not be reserved by the charitable organization for any player. Legally-blind players may use their own cards if the licensee does not make Braille cards available. In accordance with KRS 238.505(15), Braille cards shall not be considered gaming supplies and equipment and may be purchased from ordinary sources of supply. [Braille cards are not considered gaming supplies.]

(4) More than one (1) charitable organization shall not [cannot] conduct gaming at the same time and location as another charitable organization except for licensed charity fundraising events.

(5) If a bingo session is [must be] cancelled once it is commenced, an organization may refund a portion of the purchase price of the bingo paper or card minding device. An organization shall not [must] continue the session or award the prizes at a later date.

(6) Each organization's gaming supplies shall [must] be maintained in a location separate from another organization's gaming supplies. This location shall be locked and access shall be controlled [secured].

(7) A volunteer at a charitable gaming occasion at which bingo cards or faces are sold shall not purchase or play bingo cards or faces [issue] at that occasion unless the volunteer's [their] duties are complete for the occasion. Once a volunteer starts playing bingo, that person shall not volunteer for the remainder of that game [they start playing bingo, they cannot volunteer at that occasion].

(8) House rules. If the charitable organization has house rules concerning its bingo session, the house rules shall:

(a) Be posted at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming session; or
(b) Be listed on the program;
(c) Be kept with the organization's session records;
(d) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1.

1: (e) Be followed; and
(f) Include the organization's name and license number.

[No one shall volunteer for more than four (4) gaming sessions; a weekly charity fundraising event is not included in this limitation.]

(8) Anyone employed by the organization to perform [fanatical, security, or bookkeeping duties] shall not purchase or play bingo faces nor volunteer for any activity associated with that organization's gaming.

(4) If the charitable organization has house rules concerning its bingo session, those rules shall be posted in (a) [at least two (2): [unessential]] facsimile [facsimile] at the bingo session and must be [announced prior to the commencement of the bingo session, listed on the bingo program,] [and kept with the organization's session records.]

(9) ([14]) If the charitable organization has house rules concerning its bingo session, those rules shall be posted in (a) [at least two (2): [unessential,] [facsimile] at the bingo session and must be [announced prior to the commencement of the bingo session, listed on the bingo program,] [and kept with the organization's session records.]

(10) ([14]) Every ball in the bingo machine or other selection device shall be placed out for verification at the commencement and at the completion of each bingo session.

([12]) Each sheet in a pack shall be distinguishable from all other sheets in the pack by color or border.

(11) ([14]) Individual bingo paper sheets in a pack shall not be sold as individual bingo paper sheets.

(12) ([14]) The organization shall have a complete set of paper and that paper before starting another set.

(13) ([14]) An organization shall not use two (2) or more sets of bingo paper sheets or bingo paper sheets during a single bingo game if they have identical faces, except that identical faces may occur on break-open bingo paper sheets during a break-open bingo game.

(14) ([14]) A [player- or] charitable organization shall not separate faces on one (1) paper sheet or any paper sheets in a pack prior to play.

(15) ([14]) The price for each type of bingo sheet, pack, or package shall [must] be listed on the bingo program.

(16) ([14]) Bingo paper sheets, bingo paper packs, and bingo paper packages shall be used during the bingo session for which they were purchased. An organization shall not allow a player to carry over purchased, but unused, bingo paper sheets, bingo paper sheet packs, or bingo paper packages to a subsequent bingo session.

(17) ([14]) An [No] organization shall not allow a player to play bingo paper that was not purchased at that session, except for Braille cards as provided in subsection (3) of this section [section for Section 2 of this administrative regulation].

(18) ([14]) If a bingo pack or package is sold after the first game in a session, the organization shall deface the sheets for games already played or in play. No bingo paper sheets or break-open games may be sold after the game has been played or in play.

(19) ([14]) The organization shall not duplicate or otherwise make copies of bingo paper.

(20) If an organization sells the same paper packs or paper sheets for different prices, then the packs or sheets shall [must] be distinguishable by serial number and color or border.

(21) If an organization bundles bingo paper faces, it shall [must] record the serial number and the number of packs sold for each type of pack that makes up the bundle.

(22) Each bingo sheet, pack, or package shall be sold separately. An organization shall not sell multiple sheets, packs, or packages for less than the total value of each if they were sold separately.

Section 2. Playing. (1) All players shall be physically present at the location where the bingo game is held in order to play the game or claim a prize as offered.

(2) The bingo session shall start (start) when the first ball is selected including the nickle jar, bonganza ball, or [red] hot ball [selection device is activated].

(3) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be
awarded.

(4) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be [posted in a conspicuous place and] listed in the bingo [an occasion] program.

(5) After selecting each number, the bingo caller shall:
(a) Clearly announce the number;
(b) Display the ball or other device used in a manner allowing the players to see the number, except displaying the ball shall not be required during [except in a speed game];
(c) Cause the ball or other device to be placed in a ball tray or other device so as to prevent it from being placed back into the selection pool; and
(d) Enter each letter and number called on a [flashboard] [flash card] or similar device for player viewing.

(5) A winner shall be determined when the announced pattern of squares is covered by a player on a card.

(7) It shall be the player's responsibility to notify the game operator or caller that the player has a winning bingo combination as announced.

Section 3. Pickle Jar, Bonanza Ball, or Hot Ball. If the organization gives an additional prize if a patron wins on a certain number, the rules of play and cost to enter shall [must] be listed on the bingo [occasion] program. These numbers may be selected and posted before the first game is called.

Section 4. Break Open Bingo. (1) A break-open bingo game shall begin when, in the presence of players attending the bingo occasion, the organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate bingo number container. These numbers shall [must] be posted on a separate board than the regular bingo board unless the program board is capable of keeping track of these numbers separately. The balls shall then be [are then] placed back into the selection pool until the game is played on the program.

(2) Sealed bingo paper sheets for a break open game may be sold throughout the bingo occasion. Additional bingo paper sheets for a break open game shall not [However, no additional sealed-bingo-paper-sheets may be sold after the organization resumes calling letters and numbers when the game is played on the program.

(3) An organization may allow players to trade break open bingo faces for new faces.

(4) If the charitable organization allows players to trade break open bingo faces for new faces [break-open-bingo-game(s) are] played. Two (2) sets of the game [faces shall] [must] be maintained. One (1) set shall not be an "original" set and shall be of a different serial number [color] than the second set, known as the "trade-in" set.

(5) An organization [shall announce at the start of the break open-bingo-game, and] shall list on the bingo program the [color] and [price of the original set and the trade-in set].

Section 5. Player Pick. If the charitable organization offers a Player Pick game, the requirements in this section shall apply.

(1) A player shall select numbers between one (1) and seventy-five (75). A player shall not select more than five (5) numbers for each column.

(2) [No] Duplicate numbers shall not [must] be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.

(3) Once selected, the machine shall [will] print a face with the selected numbers.

(4) The faces shall conform to the construction and randomization standards set forth in 820 KAR 1:042 [1:035] [in-the-regulations].

(5) The price of each face and the amount of numbers that will [must] be chosen shall be listed on the bingo [occasion] program.

(6) The numbers shall be [are] daubed as the balls are called when the game is played as listed on the bingo [occasion] program.

(7) A player shall win [wins] if he or she is the first person to cover the numbers.

Section 6. Continuation Games. (1) Multiple [up-to-three-] (3) patterns may be played on one (1) bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls shall not be [are not] returned to the selection pool after a winner has been determined and verified.

(2) Each winning pattern shall be verified independently.

Section 7. Progressive Bingo Games. (1)(a) Progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on progressive games are included in the prize limit established [of $5,000] per twenty-four- (24)-hour period—prescribed in KRS 238.545(1) regardless of the method by which a player is eligible to participate.

(b) The licensed charitable organization shall be responsible for ensuring that the value of any progressive bingo game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the $5,000 limit.

(c) All receipts on progressive bingo games shall be reported to the office as gross receipts for the date collected pursuant to KRS 238.550.

(2) Once a progressive bingo game has been started, the game shall be played in the same manner at every occasion until the prize is awarded. The jackpot prize shall be offered at each successive bingo occasion for any charitable organization [the licensee] until the jackpot prize has been won.

Section 8. Winner Verification and Registration. (1) Manufacturers of bingo paper shall make available for purchase a verification book or other verification system for all paper manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of paper in play.

(3) When a player declares a winning bingo, the following steps shall be followed for winner verification:

(a) The game shall be stopped before the next number is called. If the next number has been selected, it shall be secured to ensure that if the declared "bingo" is invalid, the game will [may] continue.

(b) If an electronic verifier or verifier book is used, a volunteer for the charitable organization shall:

1. Show the winning face to a neutral player, who shall be a player other than the winner; and
2. [and] Call back the number while in front of the neutral player.

2. If any other verification system is used, a volunteer for the charitable organization shall:

1. Show the winning face to a neutral player, who shall be a player other than the winner; and
2. [and] Call back the winning combination while in front of the neutral player.

(4) The caller shall ask at least twice if there are any other winners before announcing the close of the game. If playing a continuation game, the caller shall ask at least twice if there are any other winners before the close of that part of the game.

(5) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

(a) Cash prizes shall be divided equally among the verified winners; and

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

Section 9. Prizes. (1) If a merchandise prize or discount is available to everyone, it shall be considered a promotional item and counted as an expense.

(2) If a merchandise prize or discount is not available to everyone, it shall be included in the prize limit established [at $5,000 per twenty-four- (24)-hour period—prescribed in KRS 238.545(1) at its fair market value. It shall be included in expenses for purchased prizes at actual cost.
(3) The fair market value of bingo paper, a card-minding device, or pulltabs given away as a merchandise prize shall be [ie] the price that a patron would have paid for the same bingo paper, a card-minding device, or pulltab at that gaming occasion.

(4)(a) If bingo paper is given away as a promotional item, a door prize, or a bingo game prize, the patron shall be given a voucher. The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher; and
2. The date on which it was awarded; and
3. The number of cards-minding devices and the number of faces loaded on each device given in exchange for the voucher; and
4. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its session records.

(b) If a card-minding device is given away as a promotional item, a door prize, or a bingo game prize, the patron shall be given a voucher. The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher; and
2. The date on which it was awarded; and
3. The number of card-minding devices and the number of faces loaded on each device given in exchange for the voucher; and
4. The organization shall retain the voucher with its session records.

(a) If a pulltab is given away as a promotional item, a door prize, or a bingo game prize, the patron shall complete a pulltab receipt.

(b) The voucher shall include:

1. The name and serial number of the pulltab game and the number of pulltabs awarded; and
2. The printed name and signature of the patron in charge of bingo payouts [payers shall be given a voucher. The voucher shall be completed with the name, address, and phone number of the patron redeeming the voucher, the date on which it was awarded, the date on which it was redeemed, and the name, serial number, form number, and amount of the pulltab(s) given in exchange for the voucher. Once the voucher is completed, it shall be redeemed for the pulltab(s).]

(c) The organization shall retain the voucher with its pulltab receipt [session] records.

(d) Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(e) Vouchers shall be redeemed on the same day as awarded.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:050. Raffle standards.

RELATES TO: KRS 238.545(3), 238.550(5)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9) [238.545(3), 238.550(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) authorizes the Office [Department of Charitable Gaming][e] to establish reasonable standards for the conduct of charitable gaming and KRS 238.515(9) authorizes the Office to promulgate administrative regulations necessary to implement KRS Chapter 238 [to establish standards for the construction and distribution of raffle materials and for the conduct of raffles]. This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section and shall be consecutively numbered.

(2) The detachable section of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser’s name, complete address, and telephone number.

(3) The following information shall be printed on each ticket:

(a) The date and time for each drawing [date(s) and time(s) of the drawing(s)];

(b) The location of each drawing [location(s) of the drawing(s)];

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization’s license number or exemption number, if any;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over $500.

(4) The requirements of subsections (2) and (3) of this section shall be waived:

(a) The raffle sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed $250; or

(b) The raffle sales are initiated and concluded and all winners are selected at a special charity [charitable] fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charity [charitable] games.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) A person shall not [No person shall] be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections of all tickets sold prior to the drawing.

(4) Before drawing, the charitable organization shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If the winner is not present at the drawing, the organiz-
ZATION SHALL NOTIFY THE WINNER BY CERTIFIED MAIL WITHIN SEVEN (7) 
DAYS OF THE DRAWING (THE ORGANIZATION SHALL ATTEMPT TO CONTACT THE 
WINNER BY TELEPHONE AND FIRST CLASS MAIL), POSTAGE PREPAID WITHIN THIRTY (30) DAYS OF THE DRAWING.

(5) IF AN ORGANIZATION IS UNABLE TO CONTACT A RAFFLE WINNER AFTER 
REASONABLE EFFORT, THE ORGANIZATION SHALL DRAW ANOTHER TICKET (RENEW 
THE PROCESS).

(6) IF A RAFFLE WINNER DOES NOT CLAIM THE PRIZE WITHIN THIRTY (30) 
DAYS AFTER HAVING BEEN NOTIFIED, THE ORGANIZATION SHALL NOTIFY THE 
OFFICE OF CHARITABLE GAMING AND DRAW ANOTHER TICKET (RENEW THE 
PROCESS) IN THE PRESENCE OF OFFICE PERSONNEL.

(7) THE REQUIREMENTS OF SUBSECTIONS (5), (6), AND (7) OF THIS 
SECTION SHALL BE WAIVED, AND THE ORGANIZATION SHALL BE ALLOWED 
TO DRAW TICKETS UNTIL A WINNER IS PRESENT IF:

(a) THE RAFFLE SALES ARE INITIATED AND CONCLUDED AND ALL WINNERS 
ARE SELECTED WITHIN A TWENTY-FOUR (24) HOUR PERIOD, AND THE TOTAL 
FAIR MARKET VALUE OF ALL RAFFLE PRIZES AWARDED IN ANY TWENTY-FOUR (24) 
HOUR PERIOD DOES NOT EXCEED $250, OR

(b) THE RAFFLE SALES ARE INITIATED AND CONCLUDED AND ALL WINNERS 
ARE SELECTED AT A LICENSED CHARITABLE RAFFLE FUNDRAISING EVENT.

[SECTION 4. RAFFLE TICKET SALES: RECORDS. (1) FOR A PERIOD OF 
THIRTY-SIX (36) MONTHS FOLLOWING THE DATE OF THE RAFFLE DRAWING, THE 
CHARITABLE ORGANIZATION SHALL MAINTAIN ACCURATE RECORDS AS TO 
THE RAILLE TICKETS SOLD. THE RECORDS SHALL INCLUDE:

(a) THE NAME OF THE CHARITABLE ORGANIZATION;

(b) THE NUMBER OF TICKETS SOLD;

(c) THE PRICE PER TICKET;

(d) THE DATE OF THE DRAWING;

(2) OTHER RECORDS. THE CHARITABLE ORGANIZATION SHALL RETAIN 
THE TICKET PURCHASE BOOKS AND AN ACCOUNTING OF THE TOTAL AMOUNT OF 
PROCEEDS RECEIVED FROM THE RAFFLE AND THE EXPENSES FOR THE RAFFLE FOR A PERIOD OF THIRTY-SIX (36) MONTHS FOLLOWING THE DATE OF THE RAFFLE DRAWING.]

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LBC: December 15, 2005 at 11:11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at AARS, February 13, 2006)

820 KAR 1:055. Charity fundraising event standards.

RELATES TO: KRS 238.515(2), (4), (9), 238.535, KRS 238.545, 238.547

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.535(4)(a), 238.545(4)

NECESSITY, FUNCTION, AND CONFORMITY. The Office of 
Charitable Gaming is authorized by KRS 238.515(2) to establish 
reasonable standards for the conduct of charitable gaming. KRS 
238.515(2) requires a license in order to conduct a charitable 
fundraising event. This administrative regulation establishes 
standards for the conduct of charitable fundraising events.

Section 1. Issuance of License. (1) An organization shall submit a complete, accurate, and verifiable application on Form CG-
Schedule A, Application for Charity Fundraising Event License 
or Special Limited Charity Fundraising Event License, for a 
charitable fundraising event at least thirty (30) days prior to the scheduled date for the charitable fundraising event.

(2) A processing fee of twenty-five (25) dollars shall accompany each application for licensure.

(3) At the time the application is filed, the organization shall provide the office with a copy of the executed lease, if applicable.

(4) All information requested by the office shall be submitted and reviewed before a license may [may be] granted.

(5) The office shall [may] issue a license if the applicant possesses a regular charitable gaming license and has met the requirements for licensure set forth in KRS 238.505(8) and 238.545(4).

(6) The license shall be issued for the county in which the organization currently holds its regular gaming license.

(7) The event shall not be advertised nor preregistrations taken until a license is issued.

(8) Once a license is issued, players may preregister prior to the day of the event for the event only if payment is received by credit card, check, or electronic fund transfer (and credited into the charitable gaming account).

(9) Pursuant to its discretion under KRS 238.505(8), the office has determined that charity game tickets, or pulltabs, shall not be approved some of chance at a charity fundraising event held by an exempt organization.

Section 2. Special Limited Games Played at a Charity Fundraising Event. (1) The office [shall] may grant approval to play special limited games at a charity fundraising event if the information contained in the application and the totality of the circumstances show that the event meets the requirements of KRS 238.545(4)(d).

(2) Special limited charitable games played at charity fundraising events pursuant to KRS 238.545 (4)(d) shall comply with KRS 238.547.[not exceed six (6) hours each day and shall be conducted only between the hours of noon and 1:00 a.m.]

(3) A central bank shall be maintained and kept shall be used for all special limited games played. The central bank shall be used for selling and redeeming scrip.

(4) For all games that require a central bank to be used, the amount of cash received for selling scrip to the gross receipts, any scrip redeemed in the payoffs, and in cash remaining in the adjusted gross receipts.

(5) Games requiring a predetermined amount of scrip shall be precounted. Accurate records shall be kept of all scrip sales, whether the sale is an initial entry fee or a last purchase of scrip.

(6) If special limited games are played at a charity fundraising event, the rules of each type of special limited game played and the cost to enter shall be listed on the gaming occasion program.

(7) If the special limited charity games are played as a tournament, then:

(a) A record of attendance shall be kept for the special limited charity games; and

(b) The cost to enter, the cost of the buy backs, the rules of the game, the manner for raising blanks or closing tables, and the prizes shall be listed on the gaming occasion program. The prizes may be listed as a percentage of the receipts [Each player's name and address shall be recorded upon payment of the entry fee. If additional scrip is purchased, the amount purchased shall be indicated by the patron's name. If the scrip is redeemed, the amount shall be indicated by the patron's name].

Section 3. Volunteers. (1) All individuals involved in any way in the conduct of a charity fundraising event shall be trained in the proper conduct of the game and the control of funds.

(2) The chairmanperson shall:

(a) Be in charge of the licensed gaming occasion;

(b) [shall] Supervise and direct all volunteers; and

(c) [shall] Be responsible for assuring the proper receipt and recording of gaming funds. (The chairmanperson shall not be compensated)

(3) An individual cannot volunteer for more than four (4) charity fundraising events per year. This limitation does not include the four (4) gaming occasions per week as set forth in 820 KAR 1:036, Section (16), and 820 KAR 1:046, Section (16).]
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Section 4. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, scrip [scrip], or imitation money shall not be considered [are not] charitable gaming supplies, and equipment and may be purchased from ordinary sources of supply. The organization shall not pay for poker tables, blackjack tables, prize wheels or equipment, or imitation money from the charitable gaming account. (2) Roulette wheels and craps tables shall be considered [are] charitable gaming supplies and shall be obtained from a licensed distributor. The organization shall pay for roulette wheels and craps tables from the charitable gaming account. (3) If special limited charity games are played, the organization shall provide the office with a copy of the executed contract for the use of all supplies furnished later than thirty (30) days following the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 5. Expenses. (1) The organization shall pay the gaming expenses for the event from the charitable account. All other expenses must be paid from the general account. (2) If an expense is both a general expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the charitable account to the general account.

Section 6. House Rules. (1) If the charitable organization has house rules concerning the event, they shall be posted at each location of gaming at the event including each booth, and kept with the gaming occasion record. The house rules shall not conflict with the statute or the regulations. The house rules shall include the organization's name and license number. The house rules shall be followed.

Section 7. Incorporation by Reference. (1) Form CG-Schedule A, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License (2/06 [06/06]), is incorporated by reference. (2) This material [these forms] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday (40601-2630), 8 a.m. to 4:30 p.m. [closed Monday through Friday).

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Commissioner
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARR, February 13, 2006)

820 KAR 1:068 Special limited charity fundraising event standards.

RELATES TO: KRS 238.515(2), (4), (9), 238.545(4), 238.547.
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.545(4), 238.547.
NECESSITY, FUNCTION, AND CONFORMITY: The Office of Charitable Gaming is authorized by KRS 238.515(2) to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(4) requires a license in order to conduct a Special Limited Charity Fundraising Event. This administrative regulation establishes standards for the conduct of special limited charity fundraising events.

Section 1. Issuance of License. (1) An organization shall submit a complete, accurate, and verifiable application on Form CG-Schedule A, Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License, for a special limited charity (charitable) fundraising event at least thirty (30) days prior to the scheduled date for the special limited charity fundraising event. (2) A processing fee of twenty-five (25) dollars shall accompany each application for licensure. (3) At the time the application is filed, the organization shall provide the office with a copy of the executed contract, if applicable. (4) All information received by the office shall be submitted and reviewed before a license shall be granted. (5) The office shall [may] issue a license, if the applicant possesses a regular charitable gaming license and has met the requirements for licensure set forth in KRS 238.505(18) and 238.547. (6) The license shall be issued for the county in which the organization currently holds its regular gaming license. (7) The event shall not be advertised nor preregistrations taken unless a license is issued. (8) Once a license is issued, players may preregister prior to the day of the event for the event only if payment is received by credit card, check, or electronic fund transfer [and credited into the charitable gaming account].

(9) A central bank shall be maintained in accordance with KRS 238.547(3) and (8), [charity, script, or imitation money shall be used for all special limited-games played. The central bank shall be used for selling and redeeming chips, script, or imitation money. (10) For all games that require a central bank to be used, the amount of money received for selling chips, scrip [scrip], or imitation money shall be [the] gross receipts, all chips, script [script], or imitation money redeemed shall be [the] adjusted gross receipts. (11) Games requiring a predetermined amount of chips, scrip [scrip], or imitation money shall be recorded. Accurate records shall be kept of all chips, script [scrip], or imitation money sales, whether the sale is an initial entry fee or a later purchase of chips, scrip [scrip], or imitation money. (12) If the special limited charity games are played as a tournament, then: (a) A record of attendance shall be kept for the special limited charity games; and (b) The cost to enter, the cost of the buy backs, the rules of the game, the manner for raising blinds or calling cards, and the prizes shall be listed on the gaming occasion program. The prizes may be listed as a percentage of the receipts. The rules of each type of special limited-games played and the cost-to-enter shall be listed on the gaming occasion program. (13) A record of attendance shall be kept for the event.

(14) If the special limited games are played as a tournament, then each player's name and address shall be recorded upon payment of the entry fee. If additional script is purchased, the amount purchased shall be indicated by the patron's name or the script is redeemed, the amount shall be indicated by the patron's name.

Section 2. Volunteers. (1) All volunteers involved [in any way] in the conduct of a special limited charity fundraising [fund-raising] event shall be trained in the proper conduct of the game and the control of funds. [No volunteer can receive compensation for volunteering at such an event.] (2) The chairperson shall: (a) Be in charge of the licensed gaming occasion; (b) Shall Supervise and direct all volunteers; and (c) Shall be responsible for ensuring the proper receipt and recording of gaming funds. [The chairperson shall not be compensated.] (3) An individual cannot volunteer for more than four (4) charity fundraising events per year, including two (2) special limited fundraising events. This limitation does not include the four (4) fundraising events per year as set forth in 820 KAR 1.036, Section 1(6), and 820 KAR 1.046, Section 1(9).]
Section 3. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, *scrip* [scrip], or imitation money shall not be considered *are not* charitable gaming supplies and equipment, and may be purchased from ordinary sources of supply. The organization shall not pay for poker tables, blackjack tables, prize wheels or chips, *scrip* [scrip], or imitation money from the charitable gaming account.

(2) Roulette wheels and craps tables shall be considered *are* charitable gaming supplies and shall *must* be obtained from a licensed distributor. The organization shall pay for roulette wheels and craps tables from the charitable gaming account.

(3) For the special limited charity games played at the event, the organization shall provide the office with a copy of the executed contract for the use of those supplies no later than thirty (30) days following the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 4. Expenses. (1) The organization shall pay the gaming expenses for the event from the gaming account. All other expenses shall be paid from the general account.

(2) If an expense is both a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and non-gaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

(3) Food, beverages, and other items provided to participants without additional payment at an event where only gaming activity takes place shall be considered a promotional expense, if all participants are equally eligible.

Section 5. House Rules. If a charitable organization has "house rules" concerning the event, it shall post those rules at the gaming occasion, announce them prior to the commencement of the event, and keep them with the gaming occasion record. The "house rules" shall be consistent with the statute or the regulations and must include the organization's name and license number. The "house rules" shall be followed.

Section 6. Gaming Occasion Program. The rules of each type of special limited games played and the cost to enter must be listed on the gaming occasion program. The program shall be available to all players.

Section 7. Incorporation by Reference. (1) Form CG-Schedule A, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License (2006-06/07)," is incorporated by reference.

(2) This material (These items) may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601 [40601-2620], 8 a.m. to 4:30 p.m. [Monday through Friday].

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARR, February 13, 2006)

820 KAR 1:057. Accurate records.

RELATES TO: KRS 238.550(5), 238.560(2)
STATUTORY AUTHORITY: KRS [238-600(4)] 238.515(4), (9), 238.550(3) [2(3), (4), (6), 238.560(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) and 238.550(5) authorize the office to establish and enforce standards for accounting, recordkeeping [record-keeping], and reporting to the office to ensure charitable gaming receipt[s] are counted and reported. This administrative regulation establishes the minimum requirements for accurate records.

Section 1. Bank Account and Records. (1) A licensed charitable gaming organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account.

(3) All receipts from each gaming occasion shall be deposited by the second business day following the occasion at which they were received. The deposit [deposits] for each occasion shall be made separately and shall not [cannot] be combined with the deposits [deposits] from any other occasion.

(4) All types of deposits, including [but not limited to] startup cash, bad checks collected and check collection fees, progressive game carry forward, and adjusted gross receipts, shall be [made into the charitable gaming account in separate deposits with each type on a separate deposit ticket. Each item of each deposit, including each individual check, must be] listed separately on the deposit ticket. If a register tape is run listing the amounts of the individual checks, it may [can] be attached to the deposit reconciliation sheet and the deposit slip, if possible. Each individual check shall be listed separately on the deposit slip. Total cash and coins shall [must] be listed separately. The organization shall keep a copy of the deposit ticket.

(5) [Bad] Checks that have been returned for insufficient funds that have not been collected shall be retained by the organization for three (3) years following the close of the last calendar year [in which the check was returned] for bookkeeping purposes. If the check has been turned over to someone else for collection, the organization shall keep a copy of the check with information regarding the person collecting the check.

(6) Monthly bank statements and reconciliations for all accounts shall be maintained for three (3) years following the close of a calendar year.

(7) Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be provided to the office upon request [maintained for three (3) years following the close of a calendar year].

(8) Gross receipts shall include the money received from the sale of raffle tickets, bingo cards or faces, card-playing devices, pull tabs, electronic fund transfer, charitable fundraising event games, special limited charity fundraising event games, bad check collections, and reasonable check collection fees minus bad checks.

Section 2. Start-up [Start-Up] Cash. (1) If the source of start-up cash is not the charitable gaming account, the source of the start-up cash shall [must] be identified on the gaming occasion sheet and signed by an officer and the chairperson.

(2) If there is any change in the amount of start-up cash for each occasion, a detailed explanation shall be provided on the gaming occasion record and shall be signed by an officer and the chairperson.

(3) Start-up [Start-up] cash from one (1) organization shall not be commingled with the start-up [start-up] cash from another organization. The start-up [start-up] cash shall be identified [as such] on the check withdrawing the funds and on the deposit slip, if possible.

Section 3. Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office.

(2) An organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer gener-
(3) If an organization is deficient in complying with statutory or regulatory requirements or has ineffective internal controls, the office may impose restrictions or additional record keeping and financial reporting requirements on that organization.

(4) Organizations shall prepare and maintain accurate and adequate corporate or other organizational records including articles of incorporation, minutes of board of directors meetings, and resolutions.

(5) (6) Organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(6) (7) All records shall be made available for inspection and audit at the request of the office.

(7) (8) Any organization's records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation may be retained by the office or its employees or agents. The office shall provide a written receipt of the (such) records at the time of removal.

(8) (9) Organizations shall provide records requested by the office, or any of its employees, within ten (10) calendar days, unless a longer response time is allowed by the request. [Failure to provide any record within the allowable time period shall be a violation of the regulation subject to fines and all appropriate administrative action including denial of license renewal or revocation or suspension of the gaming license.]

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brightham Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-6628, fax (502) 573-6626.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:058 Gaming occasion records.

RELATES TO: KRS 238.550(6) STATAUARY AUTHORITY: KRS 238.500, 238.515(2), (4), (6), 238.550(4)(c), (4)(h), (4)(j), (5)(g), 238.660(3)
NECESSARY FUNCTION, AND CONFORMITY: KRS 238.500, 238.515, and 238.550 authorize the office to establish and enforce standards for accounting, recording Keeping [record-keeping] and reporting to the office to ensure charitable gaming receipts are properly accounted for by the organizations. This administrative regulation establishes the minimum requirements for record-keeping [record-keeping].

Section 1. General Provisions. (1) Each licensed charitable gaming organization shall prepare and maintain records for each gaming occasion. The gaming occasion records shall be prepared or completed by a volunteer or chairperson of the organization. The gaming occasion records shall not be completed by a bookkeeper who is independently compensated for doing so [for compensation].

(2) Gaming proceeds shall be counted by an officer or a chairperson and the count shall be verified. A count may be verified by a volunteer. The name and signature of each person counting and verifying shall appear on the gaming occasion record.

(3) A gaming occasion record shall contain:
(a) The date of the gaming occasion;
(b) The name and license number of the organization conducting the gaming occasion;
(c) The printed name and signature of the chairperson in charge of the gaming occasion;
(d) The name and signature of the person taking the deposit from the gaming occasion;
(e) The printed name and signature of the person making the deposit, if different from the person taking the deposit;
(f) The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash;
(g) If any donated prizes are awarded during a gaming occasion, a notation of each prize that was donated and the fair market value. In addition, if any item with a fair market value in excess of $500 is donated, the notation for that item shall include the following information:
1. The date the item was received;
2. The date the item was awarded;
3. The name of the donor;
4. The street address, city, and state of the donor;
5. A description of the donated item; and
6. The fair market value of the donated item;
(h) A deposit reconciliation worksheet which records:
1. All currency, coins, checks, and credit card receipts available for deposit;
2. All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, bad checks collected and check collection fees, and all other gaming receipts that should be available for deposit and the amount that should be available for deposit according to the gaming occasion records; and
(i) A copy of the gaming occasion program, which shall include a printed listing of all bingo products for sale and the price of each product and all bingo games played and the payout for each game.

(4) A gaming occasion record shall contain the name and signature of the person taking the deposit from the gaming occasion and the printed name and signature of the person making the deposit, if different from the person taking the deposit.

(5) A gaming occasion record shall contain the printed name and signature of the person in possession of the start-up cash, and shall list the amount and source of start-up cash.

(6) If any donated prizes are awarded during a gaming occasion, the gaming occasion record shall include a notation of each prize that was donated and the fair market value. In addition, if any item with a fair market value in excess of $500 is donated, the notation for that item shall include the following information:
(a) The date the item was received;
(b) The date the item was awarded;
(c) The name of the donor;
(d) The street address, city, and state of the donor;
(e) A description of the donated item; and
(f) The fair market value of the donated item.

(7) [On any gaming occasion during which any individual-door prize with a fair market value over thirty (30) dollars is awarded, the following information shall be retained with the gaming occasion record.
(a) The name and address of any individual awarded the prize;
(b) The date the prize was awarded;
(c) A description of the prize; and
(d) An acknowledgement by the individual verifying the above information and verifying receipt of the door prize.

(8) [A gaming occasion record shall include a deposit reconciliation worksheet which records:
(a) All currency, coins, checks, and credit card receipts available for deposit;
(b) All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, bad checks collected and check collection fees, and all other gaming receipts that should be available for deposit; and

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(c) Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the gaming occasion records:

(3) [4][9] The organization shall complete Form CG-Vol for each gaming occasion and keep it with the gaming occasion record for that event.

(3) [4][4][10] A gaming occasion record shall contain a copy of the gaming occasion program, which shall include a printed listing of products for sale and the price of each product, and all games played and the payout for each game.

(4) If an organization offers coupons, a voucher shall be completed when the coupon is redeemed and the voucher shall be filed with the gaming occasion record.

(5) [4][4] If the organization sells gift certificates, the receipts for the sale shall be [are] counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the gaming occasion records. A copy of the 'house rules' for the gaming occasion shall be kept with the gaming occasion records.

(7) [5][2] All charitable gaming receipts and records shall be kept separate from noncharitable gaming receipts and records.

(8) [4][9] All gaming occasion records shall be retained by the organization for a period of three (3) years. Gaming occasion records shall be made available for inspection and audit by the office upon request.

(8) [4][4] Organizations shall provide records requested by the office, or any of its employees, within ten (10) calendar days unless a longer response time is allowed by the request. [Failure to provide any record within the allowable time period shall be a violation of the administrative regulation subject to fines and all appropriate administrative action, including denial of license renewal or revocation or suspension of the gaming license.]

Section 2. Bingo Paper Sale Records. (1) Bingo paper sale records shall contain the following information:

(a) Attendance determined by headcount of number of people playing bingo;

(b) Each type (the type[s]) of bingo paper being sold;

(c) The serial number of the set of each type of paper sold;

(d) The (the) starting number of each type of bingo paper available for sale at the beginning of the gaming occasion;

(e) The ending number of each type of bingo paper available for sale at the conclusion of the gaming occasion;

(f) Number of each type of bingo paper given away with the voucher being redeemed attached to the gaming occasion records;

(g) Number of each type of bingo paper destroyed;

(h) Number of each type of bingo paper sold;

(i) Price of each type of bingo paper sold;

(j) Number of tickets sold, per ticket, or hot ball games sold;

(k) Price of pickle jar, bonusa ball, or hot ball games sold;

(l) Cash or check or cash or check from the sale of bingo paper, player pick, and pickle jar, bonusa ball, or hot ball games sold for that occasion;

(m) Cash or check or cash or check from the sale of bingo paper, player pick, and pickle jar, bonusa ball, or hot ball games sold for that occasion;

(n) Cash or check or cash or check from the sale of bingo paper, player pick, and pickle jar, bonusa ball, or hot ball games sold for that occasion;

(o) Cash or check or cash or check from the sale of bingo paper, player pick, and pickle jar, bonusa ball, or hot ball games sold for that occasion;

(p) [4][3] The printed name and signature of the person responsible for bingo paper sales at that gaming occasion.

(2) Carryover or cumulative bingo game records shall contain the following information:

(a) The name of each progressive bingo game in play;

(b) A description of how the game is awarded at the maximum payout for one exit;

(c) The amount carried over from the previous occasion;

(d) The receipts from the current occasion;

(e) The amount paid out for the current occasion;

(f) The amount carried forward to the next occasion; and

(g) The printed name and signature of the person responsible for carryover or cumulative bingo game records at that occasion.

Section 3. Bingo Payout Records. [4] Bingo payout records shall contain the following information:

(1) A list of all bingo games that will be played at that gaming occasion;

(2) Each pickle jar, bonusa ball, or hot ball game available to be awarded, including the selected bingo ball associated with each;

(3) Each door prize available to be awarded;

(4) The prize expected or available to be awarded for each bingo game and door prize;

(5) The prize that was actually awarded for each bingo game and door prize, specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise, the cost of the merchandise, and the fair market value of the merchandise;

(6) If a voucher was issued for pulltabs, card-minding devices, or bingo paper, the fair market value of the voucher, which shall not exceed $1,000.

(7) The total amount of all cash awarded for bingo prizes and door prizes;

(8) The total amount of all checks issued as bingo prizes and door prizes;

(9) The total cost and fair market value of all merchandise awarded for bingo prizes and door prizes;

(10) The total amount of money paid for all merchandise awarded for bingo prizes and door prizes;

(11) A grand total of cash, checks, and merchandise awarded for bingo prizes and door prizes, which shall not exceed $1,000.

(12) The name and signature of the person responsible for the check account issued for the church;

(13) The printed name and signature of the person responsible for bingo payouts during each gaming occasion.

Section 4. Card-minding Device Records. Card-minding device records shall contain the following information:

(a) The type of programs loaded, including the number of faces;

(b) The number of units rented for each type of program;

(c) The number of each type of card-minding device rental given away, with the redeemed voucher attached to the gaming occasion records;

(d) The number of units voided for each type of program;

(e) The price per unit for each type of program;

(f) The amount of money expected to be received from the rental of card-minding devices;

(g) The actual amount of money received from the rental of card-minding devices for that gaming occasion;

(h) The cash or check or cash or check from the sale of card-minding devices for that gaming occasion;

(i) The total sales activity report; and

(j) The printed name and signature of the person responsible for card-minding device rentals at that gaming occasion.
the devices, are loaded by a manufacturer's or distributor's representative, the printed name and signature of that person shall be included;

Section 5. Pulltab Records. (1) Pulltab records shall contain the following information for each game:
(a) The name, serial number, and form number of all games played;
(b) The name of all progressive jackpot games in play during that gaming occasion;
(c) The ticket count for each pulltab game sold;
(d) The prize for each ticket;
(e) The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;
(f) The name, serial number, form number, and quantity of pulltab tickets given away as prizes, excluding those pulltab games manufactured to pay out in pulltabs instead of cash. The redeemed voucher shall be attached to the gaming occasion records;
(g) The prize that was actually awarded for each pulltab game, including the progressive jackpot games;
(h) A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost and fair market value of that merchandise;
(i) If a voucher was issued for pulltabs, card-mining devices, or bingo paper, or if other merchandise was awarded, the fair market value of and the amount paid for the pulltabs, card-mining devices, or bingo paper, or other merchandise;
(j) If a pulltab game was played in conjunction with a progressive jackpot game, as designed by the manufacturer, the amount contributed to the progressive jackpot;
(k) The cash short or cash over for each pulltab game;
(l) The total amount of all cash awarded for pulltab prizes;
(m) The total amount of all checks issued as pulltab prizes;
(n) The total fair market value of all merchandise awarded for pulltab prizes;
(o) The total amount of money paid for all merchandise awarded for pulltab prizes;
(p) If a check from the organization's charitable gaming checking account was issued as a pulltab prize instead of cash, the number of the check;
(q) The total amount of money from any incomplete sale of pulltab games; and
(r) The printed name and signature of the person responsible for the payouts during each gaming occasion.

(2) Progressive pulltab records shall contain the following information:
(a) The name of each progressive pulltab jackpot game in play;
(b) A description of how the game is awarded at the maximum payout;
(c) The amount earned over from the previous occasion;
(d) The receipts from the current occasion;
(e) The amount paid out for the current occasion;
(f) The amount carried forward to the next occasion;
(g) The serial number of all games that contributed to the prize pool; and
(h) The printed name and signature of the person responsible for progressive pulltab games at that occasion.

Section 6. Raffle Records. (1) Except as provided in subsection (2) of this section, raffle records shall contain the following information:
(a) The number of raffle tickets printed;
(b) The sales price for each ticket;
(c) The date raffle ticket sales began;
(d) The date the raffle drawing was held;
(e) A voided raffle ticket or copy of a raffle ticket, if tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers assigned to them; the date or dates that money was collected from the sale of raffle tickets;
(f) The amount of money collected for each date;
(g) The number of ticket stubs collected from the sale of raffle tickets for each date;
(h) The amount of money that should have been collected based on the number of ticket stubs collected for each date;
(i) The amount of each short or cash over from raffle ticket sales for each date;
(j) The total amount of money collected for the raffle event;
(k) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;
(l) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
(m) Total cash short or cash over amount from raffle ticket sales for the raffle event;
(n) A list of all raffle prizes awarded;
(o) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost and fair market value;
(p) If a voucher was issued for pulltabs, card-mining devices, or bingo paper, or if other merchandise was awarded, the fair market value and the amount paid for the pulltabs, card-mining devices, or bingo paper, or other merchandise;
(q) If merchandise was purchased to be awarded, a receipt or other evidence of how the merchandise was acquired;
(r) The total amount of all cash awarded for raffle prizes;
(s) The total amount of all checks issued as raffle prizes;
(t) The total fair market value of all [purchased] merchandise awarded as raffle prizes;
(u) The total fair market value of all donated merchandise awarded as raffle prizes;
(v) The total amount of money paid for all merchandise awarded as raffle prizes;
(w) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(x) Each [The] winning ticket stub (stub(s));
(y) All unsold tickets;
(z) A list of all raffle expenses including a copy of all invoices supporting each expense; and
1. The printed name and signature of the person responsible for the raffle event records.
2. If the raffle is conducted pursuant to 620 KAR 1:050, Section 1(4), the raffle records shall contain the following information:
(a) The beginning and ending serial number or ticket number for each roll of tickets sold;
(b) The quantity of tickets sold;
(c) The sales price of the tickets;
(d) The date of the raffle;
(e) The total amount of money collected for the raffle event;
(f) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;
(g) Total cash short or cash over amount from raffle ticket sales for the raffle event;
(h) A list of all raffle prizes awarded;
(i) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost and fair market value;
(j) The total amount of all cash awarded for raffle prizes;
(k) The total amount of all checks issued as raffle prizes;
(l) The total fair market value of all merchandise awarded as raffle prizes;
(m) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;
(n) Each winning ticket stub;
(o) A list of all raffle expenses, including a copy of all invoices supporting each expense; and
(p) The printed name and signature of the person responsible for the raffle event records.
Section 7. Charity Fundraising Event Records. (1) Charity fundraising event records for a festival or carnival shall contain the following information:
   (a) The name of each type of game of chance played [and-the rules of each game including the manner in which the game is won and prize awarded];
   (b) The price to play each type of game of chance;
   (c) The amount of money received from the sale of each type of game of chance;
   (d) The grand total of money received from the sale of all games of chance;
   (e) The total amount of all cash awarded for each type of game of chance prize and door prize;
   (f) The total amount of all checks issued for each type of game of chance prize and door prize;
   (g) The total cost and fair market value of all merchandise awarded for each type of game of chance prize and door prize;
   (h) The total amount of money paid for all merchandise awarded for each type of game of chance prize and door prize;
   (i) If a check from the organization's charitable gaming checking account is issued as a prize instead of cash, the number of the check;
   (j) If bingo games are conducted, accurate bingo paper sale records, card-marking device records, and bingo payout records;
   (k) If pulltabs are sold, accurate pulltab records;
   (l) (iii) If a raffle is conducted within the period of the charity fundraising event, a listing of the raffle as a type of game of chance along with other games of chance;
   (m) If the charity fundraising event has a capital prize raffle for which sales were made outside the charity fundraising event period as well as during the charity fundraising event, accurate raffle records as required by Section 6 of this administrative regulation [deemed on the raffle records regulation];
   (n) If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day; and

and:
   (n) The printed name and signature of each person [name(s) and signature(s) of the person(s)] responsible for the gambling at the [each game of chance conducted at(s)-] charity fundraising event.

(2) Special limited game records for a charity fundraising event shall contain:
   (a) The name of each game to be played [and-the rules of each game, including the manner in which the game is won and prize awarded];
   (b) The gross receipts for each game for each day of the charity fundraising event [quantity of script, chips, or imitation money the central bank started with plus any sales, and the corresponding cash amount associated with each denomination of script, chips, or imitation money].
   (c) A list of all merchandise prizes awarded; and:
   (d) The quantity of script, chips, or imitation money the central bank sold during the charity fundraising event;
   (e) The amount of money received by the central bank from the sale of script, chips, or imitation money;
   (f) The quantity of script, chips, or imitation money collected by the payout booth and redeemed for prizes;
   (g) A list of all prizes awarded by the payout booth;
   (h) A notation for prizes awarded specifying whether each prize was cash, a check, or merchandise, and a description of the merchandise;
   (i) If merchandise was awarded, the fair market value and the amount paid for the merchandise and a receipt or other evidence of how the merchandise was acquired;
   (j) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check; and

and:
   (n) The printed name and signature of each person [name(s) and signature(s) of the person(s)] responsible for special limited charity fundraising event records.

(2) [In the event the central bank becomes low on script, chips, or imitation money to sell at the charity fundraising event or the payout booth becomes low on cash for prize payout, then an exchange may be performed between the central bank and the payout booth. A written receipt documenting the exchange shall be retained by the central bank and the payout booth.]

Section 8. Special Limited Charity Fundraising Event Records. (1) Special limited charity fundraising event records shall contain the following information for special limited charitable games:
   (a) The name of each game to be played [and-the rules of each game, including the manner in which the game is won and the prize awarded];
   (b) The quantity of script [or script], chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of script, chips, or imitation money;
   (c) The quantity of script, script, chips, or imitation money the central bank sold during the special limited charity fundraising event;
   (d) The amount of money received by the central bank from the sale of script [or script], chips, or imitation money;
   (e) Cash short or cash over from the sale of script [or script], chips, or imitation money;
   (f) The quantity of script, script, chips, or imitation money collected by the central bank [payout booth] and redeemed for prizes;
   (g) Prizes awarded by the central bank [payout booth];
   (h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and a description of the merchandise and the cost and fair market value;
   (i) If merchandise was awarded, the fair market value and the amount paid for the merchandise and a receipt or other evidence of how the merchandise was acquired;
   (j) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check; and

and:
   (n) The printed name and signature of each person [name(s) and signature(s) of the person(s)] responsible for special limited charity fundraising event records.

(2) [In the event the central bank becomes low on script, chips, or imitation money to sell at the charity fundraising event or the payout booth becomes low on cash for prize payout, then an exchange may be performed between the central bank and the payout booth. A written receipt documenting the exchange shall be retained by the central bank and the payout booth.]

For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising events:
   (a) A record of attendance shall be kept for the special limited charitable games; and
   (b) The cost to enter, the cost of the buy backs, the rules of the game, the manner for raising blinds or closing tables, and the prizes shall be included on the gaming occasion program. The prizes may be listed as a percentage of the records.

(3) [Entry fee per person and the quantity of script, chips, or imitation money issued each person with the corresponding cash amount associated with each denomination of script, chips, or imitation money issued;]

(4) If bingo games are conducted, accurate bingo paper sale records.
records, card-minding device records, and bingo payout records shall be maintained.

(5) (6) If pulltab tickets are sold, accurate pulltab records shall be maintained.

(6) (5) Raflies conducted at a special limited charity fundraising event shall be accounted for in the following manner:
(a) If a raffle is conducted within the period of the special limited charity fundraising event, a record of raffle receipts and payouts shall be kept on the special limited charity fundraising event gambling occasion record; and
(b) If the special limited charity fundraising event has a capital prize raffle for which sales were made outside the special limited charity fundraising event period, as well as during the special limited charity fundraising event period, accurate raffle records shall be maintained according to Section 6 of this administrative [the raffle-records] regulation.

Section 9. [Form.—The organization shall have complied with this administrative regulation if the organization completely and accurately compiles the gambling occasion records provided by the office, unless the organization uses other occasion records provided by the office, in which case the occasion records shall contain the information required in Sections 4 through 8 of this administrative regulation.


(2) This matter [item] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday (40691-2633), 8 a.m. to 4:30 p.m. [Monday through Friday].

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2006)

820 KAR 1:060. Tipping prohibited.

RELATES TO: KRS 238.540(4), 238.550(4)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9); 238.540(4), 238.550(4)

NECESSITY, FUNCTION, AND CONFORMITY: The Office [Department] of Charitable Gaming is authorized by KRS 238.515(2) to establish reasonable standards for the conduct of charitable gaming. KRS 238.540(4) provides that charitable gaming [charitable gambling is to be] conducted and administered only by the charitable organization using volunteer personnel and excludes persons [-No-person] engaged in the conduct and administration of charitable gaming from receiving [to receive] compensation of any kind. This administrative regulation prohibits tips or other gratuitous conduct.

Section 1. Tipping Prohibited. (1) [Tipping or other gratuitous conduct constitutes compensation prohibited by KRS 238.540(1).]

The charitable organization conducting charity gaming shall take one (1) or more of the following measures to inform the public that, pursuant to KRS 238.540(4), its volunteers are unable to accept tips or other forms of gratuitous conduct:
(a) Post signs in a conspicuous location that volunteers are not permitted to accept tips;
(b) Include a notation in a conspicuous location on an occasion program [if any], that volunteers are not permitted to accept tips; or
(c) Make an announcement immediately prior to the beginning of the charitable gaming session or event that volunteers are not permitted to accept tips.

(2) Except as provided in subsection (3) of this section, a charitable organization shall not pay remuneration or expenses other than those authorized in KRS 238.550(4), or award or otherwise provide any sort of benefits, to or for or on behalf of any person engaged as a volunteer in the conduct of charitable gaming sponsored by the charitable organization.

(3) A charitable organization shall be permitted to provide volunteer workers the following:
(a) Food or drink of a value not to exceed ten (10) dollars per day [in a four [4]-day] to be consumed on the premises where charitable gaming occurs or at any other location with prior written approval by the office [department];
(b) Any article of clothing worn by the volunteers on the premises where charitable gaming occurs which identifies the volunteer worker as a volunteer for the charitable organization; or [and]
(c) Any noncash item not to exceed twenty-five (25) dollars in fair market value given to volunteers upon achievement of predetermined goals in the conduct of a raffle [held in connection with a charitable fundraising event or special limited charitable-games].

(4) All expenditures made by charitable organizations for volunteers as allowed under subsection (3) of this section shall be reported on the organization's quarterly report required by 820 KAR 1:028 [Form CG-GR, "Quarterly Activity Report (9/06)].


(2) It shall create a rebuttable presumption [prima facie evidence] of compensation if a person volunteers at more than four [4] special limited charitable fundraising events per year.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: September 6, 2005
FILED WITH LRC: September 12, 2005 at noon
CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Public Protection
Office of Charitable Gaming
(As Amended at ARRS, February 13, 2008)

820 KAR 1:120. [Other] Allowable expenses.

RELATES TO: KRS 238.536, 238.550(6)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(6)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(4) authorizes the office to establish standards to ensure charitable gaming receipts are properly accounted for and KRS 238.516(9) authorizes the Office of Charitable Gaming to promulgate administrative regulations necessary to carry out the provisions of the chapter, KRS 238.550(6)(j) authorizes the Office [Department] of Charitable Gaming to approve charitable gaming expenses determined to be legitimate but which have not already been authorized by statute. This administrative regulation establishes the other allowable expenses and establishes the limitations and exclusions for the listed categories of those expenses.

Section 1. Other Allowable Expenses. In addition to those authorized expenses provided for in KRS 238.550(6), each of the following expenses are determined to be legitimate and shall be
allowable charitable gaming expenses of a licensed charitable organization:

(1) The following customary and usual banking fees or charges paid to any financial institution in connection with the organization's charitable gaming account:

(a) Monthly service charges;
(b) Check verification service charges;
(c) Check printing charges;
(d) Charges relating to returned checks; or [and]
(e) Copying charges for bank records;

(2) Customary and usual fees or charges paid to a check verification company incurred in connection with the organization's charitable gaming activities;

(3) Customary and usual fees or charges incurred with accepting and processing credit card purchases from patrons at the organization's charitable gaming activities;

(4) Food or clothing provided to volunteers as authorized in 820 KAR 1:060;

(5) Payments made to the Office [Department] of Charitable Gaming;

(6) Printing costs incurred in connection with an organization's charitable gaming activities, which shall be the costs for printing or copying raffle tickets, gaming occasion programs, house rules, and vouchers;

(7) Payments for the purchase of prizes to be awarded during the organization's conduct of charitable gaming; and

(8) Promotional items; and

[Unnumbered]

(a) Federal excise taxes levied under 26 U.S.C. 4401 and 4411 and paid by a licensed charitable organization during the calendar year.

Section 2. Charitable Gaming Expense Categories. (1) The items that may be included as an utilities expense, pursuant to KRS 238.550(6)(c), shall be the money paid for electric, gas, water, sewer, and trash collection. It may also include any telephone or cable expenses that are incurred by the charitable organization for credit card services or card-minding devices.

(2) The items that may be included as an advertising expense, pursuant to KRS 238.550(6)(e), shall be the expenses for a handout, flyer, radio, television, advertising sign, billboard, or other media used to promote an event or activity required to be licensed under KRS Chapter 238 and any printing costs associated with them.

(3) The items that may be included as a bookkeeping expense, pursuant to KRS 238.550(6)(g), shall be the costs of completing the quarterly report, the federal excise tax form, and the federal gaming forms. Bookkeeping expenses shall not include expenses associated with handling charitable gaming funds, prepping gaming occasion records, or ordering supplies.

(4) The items that may be included as security services, pursuant to KRS 238.550(6)(h), shall be the expenses associated with paying a person whose sole duty is to promote and provide peace, order, and safety at a charitable gaming event which:

(a) May include patrolling the parking lot or accompanying the organization's personnel to the bank or night depository with the charitable gaming receipts; and

(b) Shall not include costs for security or alarm systems or for special lighting for the building or parking lot.

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner

JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.

CONTACT PERSON: Christopher L. Lilly, Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Blvd., Frankfort, Kentucky 40601, phone (502) 573-5529, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Charitable Gaming
(As Amended at AARRS, February 13, 2006)

820 KAR 1:125. Gaming inspections.

RELATES TO: KRS 238.515(2), 238.550
STATUTORY AUTHORITY: KRS 238.515(2), (9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) authorizes the office to enforce reasonable standards for the conduct of charitable gaming. KRS 238.550 authorizes the office to inspect and examine charitable gaming operations. This administrative regulation establishes how the office will enforce the conduct of charitable gaming through inspections.

Section 1. Organizations. A compliance officer, investigator, auditor, or any other [An] employee authorized by [the] office may inspect the conduct of gaming by a licensed or exempt organization to ensure that it complies with all the statutes and administrative regulations of the office.

Section 2. Facilities. A compliance officer, investigator, auditor, or any other [An] employee authorized by [the] office may inspect the operation of a charitable gaming facility to ensure that it complies with all the statutes and administrative regulations of the office.

TONY S. ROYALTY, Executive Director
CHRISTOPHER L. LILLY, Commissioner

JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: December 9, 2005
FILED WITH LRC: December 15, 2005 at 11 a.m.

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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at AARRS, February 13, 2006)

902 KAR 8:080. Classification and compenation plans for local health departments.

RELATES TO: KRS 211.175(1), (2), 211.1751, 211.1752, 211.1755, 212.170, 212.870
STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation sets forth the policies and procedures for establishing [establishes] the classification and compensation plans for local health departments.

Section 1. Classification Plan. (1) The department shall establish a comprehensive position classification plan in accordance with KRS 211.1755(3)(b) and [A comprehensive position classification plan shall be established by the department] with the advice of the Local Health Department Employment Personnel Council and the local health departments.

(2) The classification plan shall establish for each class of positions:

(a) A title;
(b) A description of the duties and responsibilities;
(c) The minimum requirements of training and experience; and
(d) Other qualifications necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and shall be used to allocate positions as determined by their respective duties or responsibilities. The language of class specifi-
cations shall not be construed as limiting or modifying the authority of an appointing authority to change the duties and responsibilities of similar kind or quality, or to assign duties of similar kind or quality to an employee.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reclassification or reallocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate a newly established position to a class upon receipt of a statement, from the appointing authority, of duties, responsibilities, and requirements of the position.

(7) The department shall:
- [a] maintain a reclassification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and
- [b] periodically (conduct a general) review of the classification plan, and revise existing classifications, or add classifications at least annually, based on the review of job descriptions and other information provided by the agencies.

(8) An agency shall change the classification of an existing position through a reclassification if:
- [a] a material and permanent change in the duties and responsibilities of a position occurs; and
- [b] the change in the duties and responsibilities is characteristic of a different classification.

(9) The employee within a position at the time it is reclassified shall serve with the same status obtained before the position was reclassified; and

(10) A reclassification shall not be permitted during the initial employment probationary period.

(11) The department shall change the allocation of an existing position if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect which the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(12) The department shall:
- [a] maintain a master set of approved class specifications; and
- [b] provide each appointing authority with a copy of the master set of class specifications.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel Council and the local health departments. The plan shall take into consideration the following:
- [a] Evaluation of the complexity of the duties and responsibilities of the various classes as described by the classification plan provided for in Section 1 of this administrative regulation;
- [b] Financial condition of the agency;
- [c] Experience in recruiting for a position;
- [d] Prevailing rates of pay for services of similar kind and quality;
- [e] Benefits received by employees; and
- [f] Consistency in application among local health departments.

(2) The compensation plan shall:
- [a] include minimum, midpoint (intermediate), and maximum rates of pay for the various classes within the classification plan; and
- [b] be used to determine:
  1. A salary adjustment provided for under this administrative regulation; and
  2. The circumstances under which a salary adjustment may exceed the maximum.

(3) The department shall periodically (annually) review and amend as necessary the compensation plan with the advice of the Local Health Department Employment Personnel Council and local health departments. An amendment shall include:
- [a] A change in the minimum, midpoint, and maximum salary level for a respective classification of the classification plan; and
- [b] The manner in which a salary adjustment shall be granted.

(4) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department.

(5) A new minimum entrance salary may be established by an agency, with the approval of the department, if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. An appointment to the position may be made within the new salary range applicable to the class. If an appointment is made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(6) The department may approve a higher entrance salary for a new employee entering a professional, technical, or clerical position in the administrative level in which individual qualifications in training and experience exceed the minimum requirements for the class as follows:
- [a] Two (2) percent salary adjustment, not to exceed the midpoint, for each year of experience and appropriate education or training in excess of the minimum requirements for the respective classification;
- [b] Other qualifications established by the department with the advice of the council and local health departments.

(7) Employees possessing the same qualifications in the same class of positions, in the same agency, and who are paid below the salary level as adjusted for the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.

(8) If a former employee is reinstated or reemployed in a class for which he was previously employed, and the employee is not receiving a retirement benefit from the State Retirement System or the Teacher Retirement System, the appointing authority may make an appointment at the same rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:
- [a] Additional qualifications acquired by the employee;
- [b] Established minimum entrance salary above the former salary; or
- [c] Compensation plan changes.

Section 3. Salary Upon Appointment. (1) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department based on the criteria established in subsections (2) and (3) of this section.

(2) A new minimum entrance salary may be established by an agency, with the approval of the department, if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary to attract qualified applicants.

(3) An appointment is made at the newly established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(4) If a new minimum entrance salary (an above minimum-entrance-rate) is established by an agency for a specified class, in addition to the adjustment required by subsection 3 of this section, based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class. The adjustment shall be a fixed amount provided to each employee in the classification and shall not exceed the amount of increase applied to the newly established minimum. In fixing salaries for this adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(3) An appointment of an applicant who meets the minimum requirements for a position may be made at a higher entrance salary than the established minimum, within the salary range applicable to the class, if:
- [a] The newly-appointed employee has previous, relevant experience above the minimum requirements of the job;
- [b] The newly-appointed employee has previous, relevant experience above the minimum requirements of the job; and
- [c] The newly-appointed employee's hire rate does not exceed the salary of a present employee in the same classification.
with the comparable years of relevant experience, education, and training.

(b) [63] If the individual possesses qualifications in training and experience in addition to the minimum requirements for the class, the newly-appointed employee may receive a two (2) percent salary adjustment, not to exceed the midpoint, for each year of appropriate experience and education or training in excess of the minimum requirements for the respective classification.

(c) An employee (Ret-Employee) possessing the same qualifications, in the same class of positions, in the same agency, and who is [are] paid below the entrance salary level as adjusted for the newly-appointed employee, shall have his or her [his] salary adjusted to the approved entrance salary level.

Section 4. Initial Probationary Salary Adjustment (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period of thirteen (13) pay periods. The salary adjustment shall take effect the first pay period following completion of the probationary period.

(2) Except as provided for in 992 KAR 8:090, Section 3(3), an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

Section 5. Salary Adjustment Due to a Change in Position Duties and Responsibilities. (1) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is reassigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

Section 6. Salary Adjustment Due to a Position Reclassification. (1) A position shall be reclassified if the duties and responsibilities of a position have materially changed.

(2) An agency, based on an evaluation of a position, may request a reclassification to a different position:

(a) Within the same classification, or
(b) That has supervisory responsibilities and a higher grade level;
or
(c) In a different classification.

(3) An employee who occupies the position to be reclassified shall:

(a) Meet the minimum requirements of the new classification;
(b) Not have previously performed the job duties of the new classification;
(c) Serve a probationary period of thirteen (13) pay periods if the reclassification is to a supervisory position or a different classification within the same grade. If the employee has performed satisfactorily, as determined by the employee's supervisor, the employee shall receive a three (3) percent salary increase at the end of the probationary period;
(d) An employee that is reclassified to a position having a higher pay grade shall receive a salary increase that is the higher of:

(a) Five (5) percent of the employee's current salary;
(b) Three (3) percent for each grade increase to the new position;
or
(c) The minimum salary of the grade assigned to new position.

Section 7. Promotion of an Employee to a Vacant Position. (1) An employee may be promoted upon the request of an appointing authority if the employee meets the minimum requirements of the vacant position having a higher salary determined by the department to have and more extensive and complex job duties and responsibilities as determined by the department.

(2) The employee(s) who is advanced to a higher pay grade through a promotion shall receive a salary increase that is the higher of:

(a) Five (5) percent; or
(b) Three (3) percent for each grade increase to the new position; or
(c) The minimum salary of the new position.

(3) The employee shall serve a promotional probationary period of thirteen (13) pay periods and shall receive a three (3) percent salary increase following satisfactory completion of the probationary period, as documented by the performance evaluation.

Section 8. Demotion. (4) If an employee is demoted, the appointing authority shall determine the salary in one of the following ways:

(1) [63] If an employee requests a voluntary demotion:
(a) [63] The employee's salary shall be reduced by five (5) percent.
(b) The employee's salary shall be reduced by an additional three (3) percent if the voluntary demotion is to a position that no longer requires supervisory responsibilities;
(c) [63] If the demotion is due to reorganization by the agency, the employee may retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, if funding is sufficient the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel file;
or
(d) [63] The salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position shall be reduced to the lesser of ten (10) percent or to the minimum of the new grade.

Section 9. Salary Upon Reinstatement of Former Employee. (1) A former employee may be reinstated to a position for which the employee was previously employed.

(2) The salary of an employee that is reinstated shall be:
(a) At a salary level offered by the appointing authority if not above the salary the employee held at the time of separation;
(b) At the same pay rate the employee had been paid at the time of separation, if the time period between separation and reinstatement does not exceed three (3) years;
or
(c) At a higher salary rate if justified on the basis of:

1. Additional qualifications that have been obtained by the employee since separation from the agency;
2. Established minimum entrance salary above the former salary;
or
3. Compensation plan changes.

Section 10. Lump Sum Merit Payment. (1) The appointing authority, with the approval of the department, may award a regular, full-time, part-time 100 hour, or part-time employee an outstanding monies nonrecurring lump sum payment.

(2) The appointing authority may grant a lump sum payment to an employee meeting the eligibility criteria of this section in an amount not to exceed eight (8) percent of the minimum of the employee's classification grade during the annual evaluation period of twenty-six (26) pay periods.

(3) A lump sum payment may be granted by the appointing authority with the approval of the department, to an employee meeting the following eligibility criteria:

(a) The employee has completed the initial probationary period required on appointment; and
1. (a) The employee's performance is consistently above what is normally expected or required by the job duties and responsibilities;
or
2. (b) The employee has completed the initial probationary period required on appointment.
(b) The employee has successfully completed a special project of significant importance to warrant special attention.

(4) An employee appointed to the department shall submit a written justification to the department that shall substantiate that the employee satisfies the eligibility criteria in subsection (3) of this section for the lump sum payment to be effective.

(5) The appointing authority shall inform the Board of Health the number of lump sum payments granted during the fiscal year that exceed $2,000 per payment.

Section 11. Responsibility Pay or Detail to Special Duty. (1) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to: 
(a) Occupy a position and assume the job duties and responsibilities of an employee on an approved leave of absence or an employee that has separated from the agency; or
(b) [Re-assigned-by-the-authority] To undertake a special project assigned by the appointed authority in addition to the employee's regular duties and responsibilities.
(c) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.
(3) After completion of the special assignment, the employee shall be transferred to the former classification or resume normal duties with the employee's salary reduced by the salary rate increase received for the detail assignment.
(4) An employee shall be entitled to salary increases provided by the agency during the special assignment.

Section 12. Educational Achievement and Skill Enhancement Pay. (1) The job-related skill enhancement pay shall be granted to recognize and reward an employee who takes (recognizes and rewards employees who take) the initiative through his or her (her) own efforts to increase job worth and significantly enhance the quality of life for the agency by achieving a higher level of performance through a prescribed course of study in the employee's (her) job field.
(2) An agency may elect not to participate in the educational achievement program and advise the department in writing, if sufficient funds are not available.
(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.
(4) An appointing authority may grant a five (5) percent increase to an employee's salary for completing a high school diploma, high school equivalency certificate, or a passing score on the GED test if: (a) The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test.
1. (a) If the employee has previously attended high school and
2. (b) While in the employment of the agency;
(b) (c) The employee has not previously attended high school, has not received an equivalency certificate, or has not passed the GED test.
(c) (d) The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or passing score on the GED test.
(5) An appointing authority may grant a five (5) percent increase to an employee's salary for postsecondary education or training if:
(a) The department has determined the employee has completed 200 hours of job-related classroom instruction (or the equivalent, as determined by the department) in which the salary adjustment shall be given to each full-time and designated part-time 100-hour employee at the beginning of the first pay period following completion of the probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. Except as provided for in 902 KAR 8-080, Section 2(5), an employee shall be granted the equivalent amount that would be provided to an employee. Adjustments (1) The appointing authority or the employee may request that the salary adjustment be given to each full-time and designated part-time 100-hour employee at the beginning of the first pay period following completion of the probationary period. The salary adjustment shall take effect after twenty-six (26) pay periods of service.
(b) An outstanding-matriculants lump sum payment shall not be awarded if the employee does not grant an annual increment.
(3) An appointing authority may deny an annual increment to an employee for the following reasons:
(a) Documented unsatisfactory work performance;
(b) Excessive absenteeism;
(c) Excessive tardiness;
(d) Record of disciplinary actions; or
(e) Failure to cooperate.
(4) An employee whose annual increment is denied shall be notified by the appointing authority in writing at least two (2) weeks prior to the anniversary date. The employee's action for which the annual increment was denied may lead to disciplinary action if not corrected.
(5) An employee's established anniversary date shall be the first day of the first pay period following completion of twenty-six (26) pay periods of service during which the employee earned annual and sick leave provided by 902 KAR 8-120 after initial employment. A designated part-time-employee's established-anniversary date
shall be the first day of the first pay period upon completion of twenty-six (26) pay periods of service.

(5) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:
(a) Five (5) percent; or
(b) The minimum salary assigned to the reclassified position, if the employee's salary is below the minimum of the new grade.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(9) An annual increment date shall not change when an employee:
(a) Is in a position which is assigned a new or different salary grade;
(b) Receives a salary adjustment as a result of his position being reallocated;
(c) Is transferred;
(d) Receives a promotion;
(e) Is approved for detail to special duty;
(f) Is returned from military leave;
(g) Is reclassified, or
(h) Is promoted.

(10) The appointing authority, with the approval of the department, may award any regular, full-time or part-time employee an outstanding meritorious lump sum payment if:
(a) The employee has made or could make significant financial contributions to the department or to the local health department, or a significant improvement in service to the citizens, or
(b) The employee's job performance is outstanding.

(11) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year period consisting of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period. There shall be at least a thirteen (13) week pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(12) A new or different salary range is made applicable to a class of positions, either through a compensation plan change or the establishment of a new minimum entry salary for a classification, persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum entry salary of the new range.

(13) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence. An employee may assume additional job duties for a temporary period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the detail assignment, the employee shall be transferred to the former classification with his salary reduced to the salary rate received prior to the detail assignment. An employee shall be entitled to salary increases he would have received had he not been on special assignment.

(14) If an above minimum entrance rate is established by an agency for a classified class based on documented recruitment need, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(15) The department may approve other salary adjustments with the advice of the Local Health Department Employment Relations Council and local health departments. A salary adjustment may address special working conditions, after-hours work, or other specific circumstances.

(16) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties, but are less than those indicated through a reclassification.

Section 4. Educational Achievement Awards. (1) An appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in the section.

(2) An agency may elect not to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement award in a fiscal year.

(4) The appointing authority shall certify that the qualifying conditions established in this subsection for the appropriate type of educational achievement award have been met:
(a) High school diploma, high school equivalency certificate, or a passing score on the GED test;
   - The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test;
   a. Outside of work hours;
   b. While in the employment of the agency;
   c. The employee has not previously attained a high school diploma, equivalency certificate or passing score on the GED test; and
   d. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or passing score on the GED test.

(b) Postsecondary education or training:
   - The employee has completed 260 hours of job related instruction, or the equivalent determined by the department;
   - The employee began the coursework after becoming an employee of the agency and completed the coursework after establishing an increment date;
   - The employee has completed the coursework within five (5) years of the date on which it began; and
   - The coursework was not previously reported toward an educational achievement award;

(5) The agency has not paid for the coursework or work related sick leave when the coursework was taken.

WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner
MIKE BURNSIDE, Undersecretary
JAMES W. HOLSINGER, Jr., M.D., Secretary
APPROVED BY AGENCY: October 10, 2005
FILED WITH LRC: October 12, 2005 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502)564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at ARRS, February 13, 2005)


RELATES TO: KRS 211.170(1), (2), 211.1751, 212.170, 212.670

STATUTORY AUTHORITY: KRS 194A 050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 212.170 and 212.670 require the cabinet to approve the appointment and duties of district and local health officers.] KRS 211 1755(2) [(1) requires the cabinet to establish policiles and procedures for the personnel program for local health departments through the]
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promulgation of administrative regulations pursuant to KRS Chapter 13A [administer a personnel program for local health departments]. This administrative regulation provides for a recruitment program and establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Announcement of a Vacant Position. (1) An agency, prior to announcing a specific vacancy, shall determine whether to recruit for a vacant position on a scheduled basis or on a continuous basis for positions that are difficult to attract qualified applicants.

(2) Except as provided by KRS 8.090, Section 1. an agency desiring to fill a vacant position shall announce the vacant position in the following manner:
(a) Provide notice of the vacant position within the agency in a manner that affords the ability of current employees to know of the vacancy and procedures for submitting an application;
(b) Provide notice of the vacant position through recruitment resources that are external to the agency or
(c) A combination of (a) and (b).

(3) An announcement shall contain the following information:
(a) The conditions under which an application for potential employment shall be received;
(b) The assessment method utilized to select the individual that may include an interview or demonstration of skills and abilities;
(c) The title and minimum salary of the class of position;
(d) The rates of pay at which appointments are expected to be made;
(e) A general statement of the duties to be performed;
(f) The minimum qualifications of education, training, and experience required as stated in the classification plan;
(g) The date, if required, on which an application is to be received in the agency;
(h) Veteran's preference, if applicable;
(i) Any other conditions of competition, including the fact that failure in one (1) part of the selection criteria shall disqualify an applicant;
(j) If an agency requires preemployment drug testing, criminal records information, physical examination, or other special conditions, a statement that they shall be required upon an offer of employment;

(4) The notice of the external recruitment effort shall be distributed to one (1) or more of the following:
(a) Public officials;
(b) Employment service offices;
(c) Newspapers;
(d) Educational institutions;
(e) Professional and vocational societies;
(f) Other media, individuals, and organizations, as necessary.

Section 2. Application for Employment Submittal and Review Process. (1) The department shall be the custodian of applications. (2) An application for employment, Form CH-58, shall be required of an individual seeking employment with an agency.

Section 3. Review of Applications by the Department. (1) The department shall review and determine the eligibility of an applicant for a position announced by an agency.

(2)(a) The department shall take one (1) or more of the actions listed in paragraph (b) of this subsection if an applicant, eligible, or appointee:
1. Lacks a specific requirement established for the assessment for the class or position;
2. Is unable to perform the duties of the class;
3. Except as provided for in subsection (3) of this section, has been convicted of a felony or misdemeanor;
4. Has previously been dismissed from a public service or appointment for delinquency, misconduct, or other similar cause;
5. Made a false statement or misrepresentation in the application;
6. Has used or attempted to use political pressure or bribery to secure an advantage in obtaining the position in the examination or appointment;
7. Has directly or indirectly obtained information regarding the assessment method to which the applicant was not entitled;
8. Has failed to submit a complete application;
9. Has failed to submit the application within the time limits prescribed by the agency in the published announcement;
10. Has taken part in the compilation or administration of the interview process; or
11. Has otherwise failed to meet the provisions of this administrative regulation.

(b) Based on one (1) or more of the reasons listed in paragraph (a) of this subsection, the department shall take any of the following actions:
1. Refuse to examine an applicant;
2. Not qualify an applicant;
3. Remove the applicant's name from a register;
4. Refuse to certify an eligible on a register;
5. Consult with the appointing authority in taking steps to remove a person already appointed, refuse to examine an applicant, not qualify an applicant, remove the applicant's name from a register, refuse to certify an eligible on a register, or consult with the appointing authority in taking steps to remove a person already appointed, if the applicant, eligible, or appointee:
(a) Lacks a specific requirement established for the assessment for the class or position;
(b) Is unable to perform the duties of the class;
(c) Except as provided for in subsection (2) of this section, has been convicted of a felony or misdemeanor;
(d) Has previously been dismissed from a public service or appointment for delinquency, misconduct, or other similar cause;
(e) Made a false statement or misrepresentation in the application;
(f) Has used or attempted to use political pressure or bribery to secure an advantage in obtaining the position in the examination or appointment;
(g) Has directly or indirectly obtained information regarding the assessment method to which the applicant was not entitled;
(h) Has failed to submit a complete application;
(i) Has failed to submit the application within the time limits prescribed by the agency in the published announcement;
(j) Has taken part in the compilation or administration of the interview process; or
(k) Has otherwise failed to meet the provisions of this administrative regulation.

(3) Subject to final department approval, an applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department (formally) determine after review that:
(a) The applicant is highly qualified and eligible for appointment;
(b) The misdemeanor conviction will not adversely affect the applicant's job performance;
(c) A specific need exists for the appointment or continuing appointment of this applicant or employee; and
(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of KRS Chapter 61.

(4) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 4. Establishment of Registers of Eligible Applicants. (1) An agency may announce a position on a continuous basis for a position that is difficult to recruit for and fill. (2) If a job classification requires an applicant to meet the minimum qualifications and does not require a second examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified.

(3) If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare an appropriate register for the class from one (1) or more existing related registers.

(4) A register may be deemed to be exhausted by the depart-
ment if fewer than three (3) eligible applicants remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(5) The department may remove the name of an eligible from a register:
(a) For a disqualifying cause stipulated in Section 322(a) 11 of this administrative regulation.
(b) If the eligible applicant cannot be located by the postal authorities as evidenced by the return of one (1) police or a return postmarked "no forwarding address;"
(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;
(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;
(e) If the eligible receives a probationary appointment;
(f) If the decline an offer of appointment for which the eligible previously indicated acceptance;
(g) If the eligible fails to report for a scheduled interview without valid reason;
(h) If an eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or
(i) If an eligible has been certified three (3) times to an appointment authority and has not been offered employment.

6(a) An eligible that is appointed on a probationary basis shall be removed from all applicable registers.

(b) The eligible may request in writing to the department frequency that his name be re-registered to the applicable register before its expiration.

(c) The department shall notify the eligible by mail to his last known address of removal from the register, and the reason for removal.

Section 5. Issuance of Certification of Eligible Applicants. (1) The department shall issue a certification of eligible applicants to an agency in the following manner:
(a) A promotional certification of eligible applicants that responded to an announcement provided within an agency;
(b) A regular certification of eligible applicants that responded to an announcement provided to recruitment resources external to the agency;
(c) A combination of (a) and (b).

(2) The appointing authority may request in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(3) The life of a certification of eligible applicants during which action may be taken shall be sixty (60) days from the date of issue unless otherwise specified on the certification of eligible applicants.

(4) A regular-status employee, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which the employee was laid off;

(5) A regular-status employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(6) If a laid-off regular status employee desires reemployment in a different job classification, the employee shall meet the minimum requirements of the classification.

(7) The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.

Section 6. Assessment Method. (1) An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position, as well as general background and related knowledge. An assessment method may be:
(a) A personal interview;
(b) Physical examination;
(c) An evaluation of experience and training;
(d) A demonstration of skill; or
(e) A combination of types, so long as all applicants for an appointment are given the same assessment method.

(2) An agency may form an interview committee to evaluate an eligible applicant through a structured interview process.

(3) The interview schedule shall structure questions to assess the knowledge, skills, abilities, and the education and work experience of the applicants chosen to be interviewed.

(4) The interview questions, criteria for selecting applicants to be interviewed, profiles of interviewed applicants, and results of the interview process shall be maintained by the agency for a period of sixteen (16) months after an applicant has been appointed to the vacant position.

(Section 1. Recruitment of Eligible Individuals. (1) The department, with the advice of the council and the local health department, shall establish a program which shall provide for the recruitment needs of the various agencies.

(2) The recruitment plan shall specify the following:
(a) The conditions under which an application for potential employment will be received;
(b) The assessment method utilized to select the individual which shall include the following:
1. Meet the minimum requirements of education and experience.
2. Meet the minimum requirements of the class of position;
3. The rate of pay at which appointments are expected to be made;
4. A general statement of the duties to be performed;
5. The minimum qualifications of education, training, and experience required;
6. The date, if required, on which an application is to be received in the agency;
7. Veteran's preference;
8. The date, time, and place of a written and scored examination for the position, if required; and
9. All other conditions of competition, including that fact that failure in one (1) part of the selection criteria shall disqualify an applicant; and

(2) An agency shall determine whether to fill a particular vacancy by open or promotional examination, transfer, or reinstatement from the classified service or to establish a register for a classified position where vacancies are likely to occur by making a public announcement of the recruitment effort to attract qualified persons to fill a position. Based on the type of position to be filled, the notice of the recruitment effort shall be distributed to one (1) or more of the following:
(a) Publio officials;
(b) Employment service offices;
(c) Newspapers;
(d) Educational institutions;
(e) Professional and vocational societies; and
(f) Other media, individual, and organizations, as necessary.

(3) The department shall be the custodian of all applications.

(4) An application for employment, form CH-35, shall be required of every individual applying for employment with an agency.

(5) The department shall refuse to examine an applicant, not qualify an applicant, remove the applicant's name from a register, refuse to certify an eligible on a register, or may consult with the appointing authority in taking steps to remove a person already appointed, if the applicant, eligible, or appointee:
(a) Is lacking a specific requirement established for the examination or the class of position;
(b) Is unable to perform duties of the class;
(c) Except as provided for in subsection (7) of this section, has been convicted of a felony;
(d) Has previously been dismissed from a public service or agency for delinquency, misconduct, or other similar cause;
(c) Made a false statement in the application;
(d) Has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;
(e) Has directly or indirectly obtained information regarding examinations to which the applicant was not entitled;
(f) Has failed to submit the application within the time limits prescribed by the agency in the published announcement;
(g) Has taken part in the compilation, administration, or correction of the examination; or
(h) Has otherwise failed to meet the provisions of this administrative regulation.

(7) Subject to final department approval, an applicant or employee who has been convicted of a misdemeanor may be employed, or continue employment, if the appointing authority and the department formally determine that:

(a) The applicant is highly qualified and eligible for appointment;
(b) The misdemeanor conviction will not adversely affect the applicant's job performance;
(c) A specific need exists for the appointment or continuing appointment of the applicant or employee; and
(d) Every determination made is fully supported by written documentation available for public inspection under the provisions of I.R.S. Chapter 64.

(8) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 3 - Assessment Method - (1) An assessment method shall be practical in nature, constructed to reveal the capacity of the applicant for the particular position as well as general background and related knowledge. An assessment method may be a written-scored examination, oral-scored examination, personal interview, physical, or an evaluation of experience and training; a demonstration of skill, or any combination of types so long as each applicant for a position is given the same assessment method.

(2) The recruitment plan required by this administrative regulation shall identify the assessment method for each job classification.

(3) The department, in conjunction with an agency, may designate monitors as necessary to conduct written-scored examinations requiring test scores, and may arrange for the use of public buildings in which to conduct the written examinations. The department shall provide for the compensation of monitors.

(4) If an oral examination is a part of a total examination for a position, the department may appoint one (1) or more impartial oral examination boards as needed.

(5) The department shall notify each applicant by mail of the final rating of the examination requiring test scores as soon as the rating of the examination has been completed and the register established. An eligible, upon written request and presentation of proper identification, shall be entitled to information concerning his relative position on a register.

Section 4 - Establishment of Register of Eligibles - (1) For continuous recruitment job classifications, the department shall establish and maintain registers as follows:

(a) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified,

(b) If a job classification requires an applicant to meet the minimum qualifications and does require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified,

(c) If a job classification requires an applicant to meet the minimum qualifications and does require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified,

(d) If a job classification requires an applicant to meet the minimum qualifications and does not require a scored examination, an individual shall remain on the register for a period of one (1) year from the date on which the individual is determined qualified.

(2) The department shall certify and submit the five (5) highest scored applicants on the appropriate promotional register, if one exists.

(3) The department shall certify the appointment of eligible to the appointing authority.

(4) The department shall certify, in writing to the department of personnel, the names of eligible persons who have taken a scored examination and achieved a score of seventy (70) or above shall remain on the register for a period of one (1) year from the date on which the examination was given.

(5) The names of eligible persons who have taken a scored examination and achieved a score of seventy (70) or above shall be placed on the register in order of their final rating. If two (2) or more eligibles have final ratings which are identical, their names shall be arranged in the order of their ratings on the written part of the examination, if any, or in order of the date of receipt of application. If applications of eligibles have ratings which are identical and are received on the same day, the names shall be placed on the register in alphabetical order.

(6) If a vacancy exists in a class of positions for which there is no appropriate register, the department may prepare a provisional register for the class from one (1) or more existing related registers.

(7) A register may be deemed to be exhausted by the department if fewer than three (3) eligibles remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(8) The department may remove the name of an eligible from a register:

(a) For a disqualifying cause stipulated in Section 1 - of this administrative regulation;

(b) If the eligible cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked "no forwarding address";

(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position;

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible;

(e) An eligible receives a probationary appointment;

(f) The eligible fails to report for a scheduled interview without valid reason;

(g) An eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters or post cards;

(h) An eligible has been certified three (3) times to an appointing authority and has not been offered employment;

(i) An eligible who is appointed on a probationary basis shall be removed from all applicable registers. The eligible may request in writing to the department requesting that his name be reinstated to the applicable register at any time before its expiration;

(9) The department shall notify the eligible by mail to his last known address of removal from the register, and the reason for removal.

Section 5 - Issuance of Certificate of Eligibility - (1) For positions requiring an examination requiring test scores and upon receipt of a request, the department shall certify and submit in writing to the appointing authority the names of available persons:

(a) If one (1) position is involved, the names of the persons whose scores fall within the highest ten (10) scores earned on the examination for that class of position shall be certified;

(b) If there are fewer than the number of eligibles specified in this section, the available number shall be certified and appointment shall be made if there are as many as three (3) available eligibles for each vacancy;

(c) If more than one (1) position is involved, the department shall certify an additional eligible for each position in excess of one (1);
Department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(4) The life of a certification of eligibles during which action may be taken shall be sixty (60) days from the date of issue unless specified on the certification of eligibles.

(5) A regular employee, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which the employee was laid off.

(a) A regular employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(b) An examination shall not be required for reemployment in the same job classification from which the employee was laid off.

(c) If a laid-off regular employee desires reemployment in a different job classification, the employee shall meet the requirements and pass the required examinations for the job classifications in which he seeks reemployment.

The life of the reemployment register is one (1) year or until the employee is reemployed, whichever comes first.


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WILLIAM D. HACKER, MD, FAAP, CPE, Commissioner MIKE BURNSIDE, Undersecretary JAMES W. RUSCHINGER, M.D., Secretary APPROVED BY AGENCY: October 10, 2005 FILED WITH LRC: October 12, 2005 at 4 p.m.

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CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (As Amended at AIRS, February 13, 2006)


RELATES TO: KRS 211.170(1), (2), 212.040 [212-170](4)
212.850, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes employment categories of permissible appointments and employment probationary periods, and the employee's evaluation process.

Section 1. Initial Appointments. (1) The appointing authority of a local health department shall make an initial appointment of an eligible applicant from a certification of eligible applicants issued by the department.

(2) The reemployment of a person shall be an initial appointment if the person:

(a) was formerly employed by an agency; and

(b) is receiving retirement benefits from the: 1. Kentucky Employee Retirement System; or 2. Kentucky Teachers Retirement System.

Section 2. Provisional Appointments. (1) If there is an urgent reason for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) A provisional appointment shall not:

(a) Be made until the position has been classified and minimum qualifications established for the class of position; and

(b) Be made until the position has been classified and minimum qualifications established for the class of position; and

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a regular-status employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position within the agency, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve an initial probationary period if the employee has had a break in service of not more than twelve (12) months. The accumulated balance of sick leave earned during prior employment with the agency shall be reinstated and the period of time of prior employment with the agency shall [may] be used to determine the rate at which the employee earns annual leave.

(3) If the employee has had a break in service of more than twelve (12) months, and the break in service does not exceed thirty-six (36) months, the employee shall serve an initial probationary period and be eligible to receive a probationary increment based on satisfactory performance. If the employee satisfactorily completes the initial probationary period, the accumulated balance of sick leave earned during prior employment with the agency shall be reinstated [upon employment] and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(4) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for a provisional appointment, the appointing authority may appoint a person with the approval of the department. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, the rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, the department may issue a certification of eligible applicants who have indicated a willingness to accept temporary employment, in
the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible applicant’s [eligible employee’s] standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

(a) Increased work activity of a seasonal nature;
(b) Work study or job training programs;
(c) Special projects; or
(d) Summer employment.

(2) An applicant shall not be appointed to a seasonal position unless the applicant meets established minimum requirements.

(3) Continuous [repeated] appointments to the same seasonal position shall not be made.

Section 7. Appointment of an Individual to a Variable Hour Position. (1) An agency because of special working requirements in meeting programmatic service needs, may establish a position having variable hours of work.

(2) An agency may appoint to a variable hour position an individual who meets the minimum requirements of education and experience established for the position.

(3) An individual appointed shall be compensated on a fee for service or hourly rate, as determined by the agency.

(4) The hours of work of the individual shall not exceed four hundred hours per year.

(5) An individual appointed to the variable hour position shall be considered in the unclassified [classified] service and continued employment shall be subject to the current employment needs of the agency [discretion of the appointing authority].

(6) The compensation of the individual employed shall be determined by the appointing authority and in accordance with [References to applicable administrative regulations].

(7) The individual employed shall not be eligible for salary adjustments provided by [References to applicable administrative regulations].

Section 8. Partial-year Appointment. (1) An agency may establish a partial-year position to accommodate foreseeable seasonal fluctuations in staffing, budgetary, operational, programmatic, or other needs.

(2) A partial-year position shall contain regularly-scheduled periods, not to exceed seven (7) pay periods per year, during which an incumbent in the position remains an employee but is not at work.

(3) An employee in a designated partial-year position shall receive the following agency-provided benefits:

(a) Health and life insurance benefits provided by the agency for full-time and part-time 100-hour employees;
(b) Sick leave, in accordance with [References to applicable administrative regulations];
(c) Enrollment in the Kentucky Employee Retirement System and receipt of appropriate service credit for those pay periods of actual work; and
(d) Service credit for computation of seniority for those pay periods the employee has actually worked.

(4) The employee in a designated partial-year position shall be considered a regular-status employee following completion of the initial probationary period in accordance with Section 10 of this administrative regulation.

(5) The employee in a designated partial-year position shall:

(a) Work the required number of hours, unless the employee is absent due to illness or needing to provide care for an immediate family member; and
(b) Work at the request of the agency during periods of non-work to cover during coworker periods of illness, vacation scheduled, and other periods of agency demand [as needed].

Section 9, Performance Appraisal. (1) Except as provided in [References to applicable administrative regulations], the appointing authority, or designated supervisory staff, shall conduct a performance appraisal using Form CH-40 for a [employee].

(a) Regular status employee on an annual basis; and
(b) Probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(3) Performance appraisals shall be considered in determining:

(a) An annual and probationary salary advancement;
(b) Requesting and approving a: 1. Promotion; 2. Demotion; or 3. Dismissal; and
(c) The order of separation due to a reduction of work force.

(4) Each agency shall elect, by Board-of-Health vote, to participate in one (1) of the following employee performance evaluation programs:

(a) The current employee performance evaluation described in this section; or
(b) The evaluation program described in [References to applicable administrative regulations].

(5) An agency choosing the current employee evaluation program described in this section shall notify the department by July 1, 2006. The agency shall remain under the requirements of this section, unless the agency, by vote of the Board of Health, elects to participate in the provisions of [References to applicable administrative regulations] at the beginning of a subsequent fiscal year. An agency choosing the current employee evaluation program described in this section, shall not be subject to any provision of [References to applicable administrative regulations].

(6) An agency, by vote of the Board of Health, that elects to participate in the employee evaluation program of [References to applicable administrative regulations] shall notify the department by July 1, 2006. The agency electing to participate under [References to applicable administrative regulations] shall not convert to another employee evaluation program.

Section 10, [6.] Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in subsections (4) and (5) of this section.

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed.

(4) An employee may be separated from his position during the initial probationary period and shall not have the right to appeal except as provided by administrative regulation [References to applicable administrative regulations].

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(4) An employee may be separated from his position during the initial probationary period and shall not have the right to appeal except as provided by administrative regulation [References to applicable administrative regulations].

(g) The employee may be placed on a register of eligibles by the department, if appropriate. The dismissed employee shall not be placed on a register [certified to the agency for which separated], unless the agency requires otherwise.

(6) Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire regular status in the classified service.

(7) The initial probationary period may be extended:

(a) For the same length of time as leave granted to cover an absence due to medical reasons causing the employee to be ab-
sent from work for twenty (20) days or more during the probationary period; or
(b) If the employee, acting with due diligence, has been unable to complete a required job-related training course during the probationary period.

(8) The employee serving a probationary period may be eligible for promotion to a position in a higher class, if the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date the employee was promoted.

(9) The department, with the advice of the Local Health Department Employment Personnel Council, may require an Initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications that require extensive on-the-job training [for example, the health environmental classification].

[Section 111, [411] [511] Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full-pay periods shall be required of an employee upon promotion.
(2) If an employee is granted leave for medical reasons in excess of twenty (20) days, the employee's [he] probationary period shall be extended for the same length of time as the granted leave to cover the absence.
(3) A performance evaluation shall be completed for an employee prior to completing the probationary period in order to determine the employee's ability to perform the job duties successfully.
(4) If approved by the appointing authority, a promoted employee may request, during the probationary period, to be reverts to a position in the former class.

(5)(a) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position in the former class. The employee's [he] probationary period shall be extended for the same length of time as the granted leave to cover the absence.
(b) The employee may revert to a position in a different class if:
1. There is any vacancy in the former class;
2. The employee is qualified; and
3. The employee is certified by the department.
(c) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.
(d) If a regular status [permanent] employee is dismissed for cause while serving a promotional probationary period, the employee shall have the right to appeal the dismissal in accordance with 502 KAR 8-410.

Section 11, [411] [511] Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.
(2) A resignation shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel files.
(3) An employee's lump sum payment for accumulated annual leave and compensatory time may be held by an agency until the employee who has resigned, retired, or been dismissed, returns any agency credit cards, keys to buildings and automobiles or other agency property in the possession of the employee.

Section 12, [413] [512] Layoffs. (1) An appointing authority may lay off an employee in the classified service if necessary because of:
(a) Curtailment of work;
(b) Shortage of funds;
(c) Abolishment of a position;
(d) Modification of service requirements; or
(e) Other material change in the duties or organization of the agency.
(2) Prior to the notification of an employee that he is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval. The plan shall contain the name of the employee and the reasons, in detail, for the layoff and criteria used to select those employees subject to layoff. Upon approval of the plan by the department, the employee shall be notified that he is subject to layoff, and of:
(a) The reason for the layoff;
(b) The procedures established for the layoff of employees;
(c) The rights granted employees subject to layoff.

(3) An agency established under KRS 216.040 shall undertake the following procedures in assisting an employee subject to layoff:
(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency.
(b) If a vacancy does not exist for a position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another [any] applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register.
(c) If no position is available to an employee subject to layoff, the employee shall be notified in writing:
1. That the employee [he] is to be laid off effective at least fifteen (15) days after receipt of the notice; and
2. Of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:
(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;
(b) If a vacancy does not exist for a position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the same county as the position from which the employee is subject to layoff, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;
(c) If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another [any] applicant or eligible on a register, except another laid-off employee with greater seniority already on a reemployment register;
(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing:
1. That the employee [he] is to be laid off effective at least fifteen (15) days after receipt of the notice; and
2. Of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. An employee serving a promotional probation shall not be considered a probationary employee for purposes of layoff. For purposes of layoff, all probationary employees shall not be included an employee serving a promotional probation.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off shall be placed on a reemployment register for the class of position from which the employee was laid off and for any class for which the employee is qualified.

(8) For a period of one (1) year, a laid-off employee shall be given priority consideration by the agency before another [any] applicant or eligible except another laid-off employee with greater seniority who is already on a reemployment register.

(9) For a period of one (1) year, a laid-off employee shall not be rehired from a [any] register unless the employee:
(a) Notifies the department in writing that the employee no longer desires consideration for a position on a register;
(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same
county or agency, as the position from which the employee was laid off;
(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;
(d) Is unable to perform the duties of the class;
(e) Has been convicted of a job related misdemeanor, or
(f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

Section 13, (44) Voluntary and Involuntary Furlough: (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 13 of this administrative regulation.
(2) A voluntary or involuntary furlough shall be considered a temporary nondisciplinary leave without pay, for a specified period of time if major organizational program, and funding changes occur which may result in work reductions of one (1) or more employees of the agency.
(3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.
(4) A furlough may be for periods up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) or a continuous period of twenty-two (22) working days or may be discontinuous days or periods including portions of days.
(5) Employees shall not be paid for days while on furlough if the employee is on a continuous period of twenty-two (22) working days or may be discontinuous days or periods including portions of days.
(6) Employees shall not be paid for days while on furlough if the leave is for a continuous period. An employee's benefits shall be continued to be paid except for the following:
(a) Retirement contributions shall be based on actual earnings;
(b) Holidays that occur during the furlough period shall not be paid;
(c) Annual and sick leave shall not be used;
(d) An employee's annual and sick leave, annuity dates, and seniority shall be treated as if the employee is in pay status for the duration of the furlough;
(e) Medical, dental, life, and flexible spending accounts shall continue to be in effect upon payment of required contributions.
(6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:
(a) Shorter work days;
(b) Intermittent days off; and
(c) Consecutive days off.
(7) An appointing authority may direct an employee to be placed in a furlough status in lieu of a layoff status. Notice of the required furlough shall:
(a) Be received at least fifteen (15) calendar days prior to the beginning of the furlough;
(b) Include the period of the furlough and if the furlough is continuous or nonconsecutive;
(c) Include the status of employee benefits; and
(d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action, including dismissal from employment.

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JAMES W. HOLINSING, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
WILLIAM D. HACKER, M.D., FAAP, CPE, Commissioner
APPROVED BY AGENCY: December 19, 2005
FILED WITH LRC: December 20, 2005 at 4 p.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at ARRS, February 13, 2006)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS Chapter 18A, 211.090(3); 211.170(1), (2), 211.1751; 212.170(4); 212.350; 212.640; 212.782; 212.870
STATUTORY AUTHORITY: KRS 19A4.050(1), 211.1755(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program [KRS 212.170(2) and 211.1765(1)], and the cabinet to establish and supervise the personnel functions of local health departments. KRS 211.1755(2) and (3) requires the cabinet to establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion: (1) An employee may be promoted at any time upon the request of an appointing authority if the employee meets the minimum requirements of the position for having a higher salary as determined by the department, if
(a) Meets the minimum requirements of the position having a higher salary; and
(b) Is certified by the department.
(2) A promotion of an employee shall be based upon individual performance, with due consideration for length of service and capability of the individual employee to perform the duties and responsibilities of the [each] new position.
(3) A promoted employee shall serve a probationary period of thirteen (13) pay periods, to determine through performance evaluation if the employee can satisfactorily perform the duties and responsibilities of the position.
(4) The salary of a promoted employee shall be raised to the greater of the following:
(a) The amount required to raise the salary of the employee to the minimum established for the class;
(b) Five (5) percent of the employee's current salary if the promotion is to a class having a one (1) or two (2) grade higher salary range;
(c) Three (3) percent of the employee's current salary for each grade if the promotion is to a class having a salary range which is three (3) or more grades higher.
(5) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.
(6) A regular-status employee may be promoted from a classified position to an unclassified position [retain the employee's status in the classified service]. If separated from an unclassified position following promotion, an employee shall revert to the class in which the employee previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department, or separated from employment if a position is not available. Time served in an unclassified position shall count towards years of service and seniority. The employee shall retain seniority to earn annual, sick, and compensatory time, if applicable, and also receive agency provided benefits.
(7) If an employee is granted leave for medical reasons in excess of twenty (20) work days during the promotional probationary period, the employee's probationary period shall be extended for the same length of time as the granted leave to cover the absence.
(7) A performance evaluation shall be completed for an employee prior to completing the probationary period in order to de-
termine the employee’s ability to perform the job duties successfully.

(8) An employee who has been promoted, but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position in the former class subject to subsection (9) of this section. Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department of the reasons for unsuccessful completion.

(9) If approved by the appointing authority, a promoted employee may request, during the probationary period, to be reverted to a position in the former class. The employee may revert to a position in a different class if:
(a) There is no vacancy in the former class; and
(b) The employee is qualified; and
(c) The employee is determined eligible by the department [of the reasons for unsuccessful completion].

(10) If a regular employee in the classified service is dismissed for cause while serving a promotional probationary period, the employee shall have the right to appeal the dismissal in accordance with KRS 8.110.

Section 2. Transfers. (1) The appointing authority may, at any time, transfer a regular employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency.

(2) A transfer of a regular employee from a position in one class to a position in another class within an agency having the same entrance salary may be made only with the approval of the appointing authority and upon determination of eligibility and certification by [of] the department. [The department may require a qualifying examination.]

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority. If the transfer is approved:
(a) Accumulated annual and sick leave shall be transferred;
(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency; and;
(c) The annual increment date shall be retained by the employee.

(4) An employee initially appointed to a position in an agency having prior work experience in a health department established under KRS 212.750, 212.760, or KRS 212.762, or an employee covered under KRS Chapter 18A, may use the length of prior employment in determining the rate of earning annual leave provided for under KRS 8.120, if the prior work experience does not exceed three (3) years since separation.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:
(a) Documented unsatisfactory employee performance during the promotional probationary period;
(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties;
(c) A documented disciplinary problem or an inability of an employee to perform a duty or responsibility required of the position;
(d) Due to a reorganization or realignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests a demotion shall be reduced by five (5) percent if the demotion is classified one (1) or two (2) grades lower.

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) Except as provided in subsection (5) of this section, the salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position, shall be reduced determined by adding the total percentage difference, as described by the compensation plan, between the employee’s current grade level and the grade of the classification to which the employee is demoted.

(5) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(6) An employee is demoted during the initial probationary period, the employee shall continue in the employee’s probationary period as if the original appointment had been to the position of the lower class.

(7) The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

WILLIAM HACKER MD, FAAP, CPE, Commissioner
MIKE BURNSIDE, Undersecretary
JAMES W. HOLSINGER, JR., M.D., Secretary
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(As Amended at ARRS, February 13, 2006)

902 KAR 8:096. Local health department employee performance evaluation program.

RELATES TO: KRS 211.090(3), 211.170(1), 211.175(1), 211.177(4), 212.870
STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the polices and procedures of the personnel program for local health departments. This administrative regulation establishes the requirements and procedures for the evaluation of local health department employee performance.

Section 1. Effective Date of This Administrative Regulation. (1) The effective date for this administrative regulation shall be July 1, 2006.

(2) The purpose of the extended effective date shall be to provide for a period of time for local health departments to transition to the new employee performance evaluation program described in this administrative regulation.

(3) The cabinet shall provide technical assistance and training for appropriate local health department supervisory employees prior to the effective date of this administrative regulation.

(4) Each agency shall elect, with Board of Health approval, to participate in one (1) of the following employee performance evaluation programs:
(a) The [current] evaluation program described in [administrative-regulation] 902 KAR 8.080, Section 9; or
(b) The evaluation program described in this administrative regulation.

(5) An agency choosing the [current] employee evaluation program described in 902 KAR 8.080, Section 9, shall notify the department by July 1, 2006. The agency shall remain under the requirements of [administrative-regulation] 902 KAR 8.080, Section 9, unless the agency, with Board of Health Approval, elects to participate in the provisions of this administrative regulation at the beginning of a subsequent fiscal year. An agency choosing the current employee evaluation program, as described in this section, shall not be subject to any provision of this administrative regulation.

(6) An agency electing to participate in the employee performance evaluation program of this administrative regulation[] shall notify the department by July 1, 2006. [Participation shall be dependent on administrative-regulation changes.]
of an employee’s performance during a specified period of time.
(2) Specific objectives of the program shall include the following:
(a) Increase the efficiency of the agency and employee through
the annual planning of job duties, objectives, and performance
characteristics and assisting the employee to improve performance
through prior knowledge of the expectations of the supervisor;
(b) Serve as a medium which brings the supervisor and em-
ployee together for constructive performance discussion and writ-
ten documentation;
(c) Serve as a means to determine the level at which an em-
ployee is performing;
(d) Recognize performance that meets and exceeds perform-
ance standards;
(e) Identify and correct substandard performance;
(f) Assist in determining and recording special talents, skills,
and capabilities that might otherwise not be noticed or rec-
ognized;
(g) Ensure understanding of duties and standards expected
of the employee;
(h) Provide assistance in assigning work and delegating
responsibility based on a mutual understanding of the employee’s
skills and abilities;
(i) Encourage the continued growth and development of
employees; and
(j) Serve as a basis to review the employee’s performance
for granting work related salary adjustments.

Section 3. Designated Employee Performance Evaluations. (1) Employee performance evaluations shall be completed at the fol-
lowing times:
(a) Prior to the completion of the required initial appointment
probationary period established in 902 KAR 8:080, Section 9;
(b) At the annual employee performance evaluation in accord-
ance with Section 4 of this administrative regulation;
(c) Prior to completion of the required probationary period fol-
lowing promotion established in 902 KAR 8:090, Section 10;
(d) Following reinstatement of an employee that had a gap of
service with an agency of more than one (1) year but does not
exceed three (3) years from date of separation in accordance with
902 KAR 8:080, Section 3(3); or
(e) At a special performance evaluation required by Section 10
of this administrative regulation.

Section 4. Annual Employee Performance Evaluation. (1) An employee that has gained regular status shall be evaluated by the
appointing authority or designated supervisor on an annual basis.

(2) An employee’s established annual increment [anniversary
date shall be the first day of the first pay period after [initial line
omitted] completion of twenty-six (26) pay periods of
service during which the employee earned annual and sick leave
pursuant to 902 KAR 8:120. A designated part-time employee’s
established annual increment [anniversary date shall be the first
day of the first pay period upon completion of twenty-six (26) pay
periods of service.

(3) An employee returning to duty from leave without pay shall
receive an annual increment when the employee has completed
twenty-six (26) pay periods of service since the date the employee
last received an annual increment.

(4) An annual increment date shall not change when an em-
ployee:
(a) Is in a position that is assigned a new or different salary
grade;
(b) Receives a salary adjustment as a result the employee’s
position being reallocated;
(c) Is transferred;
(d) Receives a demotion;
(e) is approved for detail to special duty;
(f) Returns from military leave;
(g) Is reclassified; or
(h) Is promoted.

(5) A regular-status employee shall maintain his current annual
increment date upon the effective date of this administrative reg-
ulation. The performance evaluation date for an employee appointed
on or after July 1, 2006 shall be twenty-six (26) pay periods follow-
ing initial appointment.

Section 5. Employee Performance Evaluation Process. (1) The
supervisor shall maintain a record throughout the evaluation period
for each employee supervised.
(2) The record shall provide a chronological record of consis-
tently maintained accomplishments or problems by an employee.
(3) The purpose of the record shall be to ensure that the
valuations are based on actual activities and performance during
the review period and provide documentation necessary for the
performance salary adjustment or indicated disciplinary actions
necessary in the case of unacceptable performance.
(4) A performance evaluation shall be completed for each
regular status employee using the Local Health Desertion Em-
ployee performance evaluation form (CH-40A), developed by the
department in consultation with the agencies and the council.
(5) The CH-40A shall contain documented efforts made by the
supervisor during the review period to correct unacceptable per-
formance of the employee.
(6) At the beginning of the review period, [unless the appoin-
ting authority has directed otherwise] the supervisor shall identify
for each employee supervised:
(a) The performance competencies;
(b) Expectations;
(c) Goals; and
(d) Objectives.
(7) A supervisor shall develop an annual, written performance
plan for each employee supervised.
(8) The supervisor and employee shall meet to discuss the
identified performance competencies, expectations, goals, and
objectives and decide on an individual development plan to assist
the employee in performing the job. The annual performance plan shall
include:
(a) An annual performance plan period;
(b) Job-related performance competencies, goals, and objec-
tives that are consistent with the employee’s position description
and relate to the agency’s goals and performance competencies.
Each performance competency shall describe:
(1) Standards or indicators of success; and
(2) Measurable results and time frames if applicable; and

(9) Provisions for a minimum of one (1) interim performance
plan review during the plan year to discuss performance progress,
any deficiencies and plan updates as necessary.
(10) The supervisor, at the end of the review period, shall rate
the performance of an employee on the identified performance
competencies, indicating both the level of work performed and
examples of the employee’s work supporting the rating given on each
competency and the final rating the employee will receive.
(11) The supervisor shall identify the performance competen-
cies, goals, expectations, and objectives for the next plan year.
(12) The results of the employee performance evaluation may
be submitted to the reviewer, if other than the appointing authority,
and the appointing authority prior to meeting with the employee.
(13) The supervisor and the employee shall meet to discuss the
supervisory ratings, performance competencies, goals, and
expectations, objectives identified for the next review period and
the employee’s development plan for the next review period. The
employee shall have the opportunity to provide input, examples of
work and a self-evaluation for the supervisor’s consideration.
(14) The employee shall have an opportunity to attach written
comments concerning the rating of the supervisor’s evaluation. The
comments shall be provided to the supervisor no later than five (5)
working days after the supervisor and employee meet to discuss
the performance evaluation.
(15) An employee that disagrees with the performance rating
conducted by the employee’s supervisor may ask for a review with
the reviewer. If the employee is not satisfied with the response of
the reviewer, the employee may submit a grievance through the
agency’s grievance procedure.

Section 6. Employee Performance Evaluation Competencies.
(1) An employee shall be evaluated on at least the following per-
formance competencies:

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Section 7. Employee Evaluation Rating Factors. (43) The following ratings shall be used by the supervisor to evaluate an employee's job performance for the competencies identified:

(a) (e) Highly commendable performance rating level for the employee who:
   (a) [e] Consistently surpasses skill expectations in execution of the majority of critical job responsibilities and objectives;
   (b) [e] Has exceptional contributions to the overall functioning of a department by demonstrating initiative, flexibility, and creativity in addressing issues or [and/or] developing systems, procedures, or enhancements for greater efficiencies and effectiveness;
   (c) [e] Possesses superb skills and knowledge;
   (d) [e] Constantly anticipates or [and/or] responds quickly to changing situations and departmental needs; and
   (e) [e] Consistently contributes workable solutions to projects or problems;

(b) (f) Effective and commendable performance rating level for the employee who:
   (a) [e] Consistently demonstrates skill in the execution of the majority of critical job responsibilities and objectives;
   (b) [e] Makes important contributions to the overall functioning of a department by demonstrating solid performance with respect to productivity and quality;
   (c) [e] Possesses strong skills and knowledge; and
   (d) [e] Is a strong team player who [that] maintains and promotes good working relationships.

(c) (g) Needs development performance rating level for the employee who:
   (a) [e] Has the overall performance to ensure consistent execution of all job responsibilities and objectives needs development;
   (b) [e] Demonstrates success in some areas but guidance in other areas has been needed; and
   (c) [e] Demonstrates performance competencies that need further development and consistent application.

(d) (i) Unacceptable performance rating level for the employee whose overall performance indicates that:
   (a) [e] Job duties, [and] responsibilities and objectives have not been consistently met;
   (b) [e] Employee's performance requires close monitoring and has not kept pace with job related requirements; and
   (c) [e] Successes have been only occasional or of minimal impact and performance has failed to demonstrate sufficient level of competencies required.

Section 9. Salary Adjustment for an Employee Based on the Levels of Performance. (1) If, in the judgment of the supervisor and appointing authority, an employee who receives an overall rating at the highly commendable or proficient and commendable level, the employee shall be entitled to receive a salary adjustment equivalent to fifty (50) percent of the annual performance evaluation rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(2) If, in the judgment of the supervisor and appointing authority, an employee receives a performance rating at the effective and competent level, the employee shall receive the annual employee performance rate adopted by the Board of Health at the beginning of the fiscal year not to exceed five (5) percent of the employee's salary.

(b) An appointing authority shall:
   (e) require a special evaluation to be conducted no later than 120 days following the annual evaluation to determine if the employee's level of performance has improved;
   (c) [e] If the employee's performance has improved to the effective and competent level, the appointing authority shall approve the employee's receipt of the additional fifty (50) percent over the remainder of the evaluation period.

(d) [e] For the employee who shows no improvement in performance or whose performance deteriorates, the appointing authority shall:
   1. [e] Remove the fifty (50) percent salary increment; and
   2. [e] Initiate appropriate disciplinary action.

(4) If, in the judgment of the supervisor and appointing authority, an employee receives a rating at the unacceptable level, the appointing authority shall not grant a salary increase except as provided in paragraph (d) of this subsection.

(b) The appointing authority shall [paragraph (c) of this subsection.] The appointing authority shall:
   (e) Initiate dismissal action if indicated by supporting documentation.

(c) [e] If the supporting documentation does not indicate a dismissal action, the appointing authority shall initiate appropriate disciplinary action followed by a performance re-evaluation [evaluation] to be completed no later than 120 days after the disciplinary action was initiated.

(d) The appointing authority shall [or (e)] provide the employee a salary adjustment at the needs development level, if an employee improves the level of performance and satisfactorily meets the performance improvement objectives as determined by the re-evaluation.

(5) The employee performance salary adjustment shall be given to the eligible employee at the beginning of the first pay period following twenty-six (26) pay periods of service during which the employee was in pay status.
Section 10. Special Performance Evaluation. (f) A special performance evaluation [review] may be conducted at any time by the employee's supervisor to gauge the level of performance or to improve performance.

(g) The special performance evaluation would be particularly applicable if an employee's work performance deteriorates during the review cycle.

Section 11. Employee Rights and Responsibilities. (1) An employee shall have the opportunity to include written comments pertaining to an evaluation and may attach additional pages, as necessary.

(2) If the employee provides comments, the comments shall be attached to the evaluation form and made part of the employee personnel file.

(3) The employee shall sign the performance evaluation. However, the employee's signature shall not be required for the evaluation to be complete; the signature shall only indicate the evaluation has been discussed with the employee and that no disagreement or disagreement with the evaluation.

(4) (b) An employee shall be provided with the basis of the evaluation and, upon request, shall be provided a copy of documents which were considered in completing the evaluation.

(5) Upon written request to the next higher-level administrator, an employee with regular status shall be granted an opportunity to discuss any concerns regarding the evaluation.


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JAMES W. HOLINGER, JR., M.D., Secretary
MIKE BURNSIDE, Undersecretary
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CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, February 13, 2006)

922 KAR 5:070. Adult protective services.

RELATES TO: KRS 61.672, 156A.010, [Chapter] 209.005 - 209.200, 209A.051, 209B.100, 307.640(1) [Chapter] 202A.032, 202B.100, 205A.004, 205A.005, 205A.006, 205A.008, 205A.009, 205A.010, 205A.011, and 205A.012; KRS 209.140; KBE 209 meme(1); 403.2164 - 003.791.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 156A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual members of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209.030(1) authorizes the secretary to promulgate administrative regulations necessary for the implementation of adult protective services. This administrative regulation establishes the procedures for investigation and protection of adults who are suffering or at risk of abuse, neglect, or exploitation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209.020(8).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Authorized agency" is defined by KRS 209.020(17).

(4) "Caregiver" is defined by KRS 209.020(6).

(5) "Emergency" is defined by KRS 209.020(11).

(6) "Exploitation" is defined by KRS 209.020(9).

(7) "Investigation" is defined by KRS 209.020(10).

(8) "Neglect" is defined by KRS 209.020(16).

(9) "Protective services" is defined by KRS 209.020(5).

(10) "Records" is defined by KRS 209.020(15).

Section 2. Receiving a Report. (1) An individual suspected that an adult has suffered abuse, neglect, or exploitation shall:

(a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and

(b) Provide the information specified in KRS 209.030(4).

(2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140(1), unless required by:

(a) A court of competent jurisdiction; or

(b) An appropriate authorized agency.

(3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal business hours.

(4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.

(5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:

(a) Community resources; or

(b) General adult services in accordance with 922 KAR 5:090; or

(c) Domestic violence protective services in accordance with 922 KAR 6:102.

(6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:

(a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(6); and

(b) Take into consideration the safety of the adult when a report is made.

(7) The cabinet shall initiate an investigation upon acceptance of a report of:

(a) Abuse, as defined in KRS 209.020(8). If the report alleges:

1. That the adult or another individual allegedly inflicted;

2. Physical abuse inflicted on the adult resulting in pain or injury, including a mental injury;

3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or

4. An act of sexual abuse;

(b) Neglect, as defined in KRS 209.020(16), of an adult that may result in harm to the health and safety of the adult in the following areas:

1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor care as a result of;

   a. An act or omission by a caregiver;

   b. The absence of a caregiver;

2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;

3. Food neglect, if an adult shows symptoms of;

   a. Malnourishment;

   b. Dehydration;

   c. Food poisoning or;

   d. Lack of adequate food for a period of time that;

   i. Results in physical symptoms; or

   ii. Requires treatment;

4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caregiver is not taking appropriate action to eliminate the problem; or

5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that;

   a. Results in an observable decline in the adult's health and welfare;

   b. May be life threatening; or

   c. May result in permanent impairment;

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(c) Exploitation of an adult, as defined in KRS 209.020(9), if the report alleges:
   1. Isolation from friends, relatives, or important information, such as;
      a. Screening telephone calls;
      b. Denying visitors or;
      c. Intercepting mail;
   2. Physical or emotional dependency;
   3. Manipulation;
   4. Acquiescence; and
   5. Loss of resources; or
   (d) An adult in need of protective services as defined in KRS 209.020(5).
   (5) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.
   (9) The following criteria shall be used in identifying a report of adult abuse, neglect, or exploitation not requiring an adult protective service investigation:
      (a) The report does not meet the statutory definitions of;
         1. Adult and
         2. Abuse; neglect; or
         3. Exploitation; or
      (b) There is insufficient information to:
         1. Identify or locate the adult; or
         2. Explore leads to identify or locate the adult.
   (10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall:
      (a) Prepare an intake report on the "DPP-115, Confidential Suspected Abuse/Neglect Dependent Exploitation or Reporting Form"; and
      (b) Submit the DPP-115 to:
         1. For a determination of investigation assignment by cabinet supervisory staff (designated regional cabinet staff for determination of assignment for investigation);
         2. To the local guardianship office, if the adult is a state guardianship client; and
         3. To appropriate authorized agencies, as specified in KRS 209.030(4).

Section 3. Adult Protective Service Investigations. (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).
   (2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.
   (3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.
   (4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 222 KAR 1:510.
   (5) Designated regional cabinet staff shall initiate the investigation of a report of adult abuse, neglect, or exploitation. If the accepted report of adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:
      (a) An emergency, as defined in KRS 209.020(11), the investigation shall be initiated within one (1) hour; or
      (b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.
   (6) Designated regional cabinet staff shall have access to an adult's records in accordance with KRS 209.030(7).
   (7) If an adult or caretaker fails to consent to an investigation and refuses to enter the premises, in accordance with KRS 209.030(8), a search warrant may be issued.
   (8) If permission for an investigation is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.
   (9)(a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and
   (b) The cabinet shall inform the adult, witness, or alleged perpetrator that the:
      1. Statement may be shared with appropriate authorized agencies; and
      2. Individual may be required to testify in a court of law;
   (9)(b) If [(4)](5) investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:
      (a) Examine the coroner's or doctor's report;
      (b) Obtain a copy of the death certificate for the case record, if possible (and)
      (c) Notify the commissioner or designee;
      (d) [Designated cabinet staff shall]
         1. Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation; if an adult died allegedly as a result of abuse or neglect; and
         2. Determine if another resident in an alternate care facility is at risk of abuse or neglect. If the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.
      (9)(c) [Designated cabinet staff shall] unless the legal representative is alleged to have abused, neglected, or exploited the adult (elevated), a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:
   (a) The adult's account of the situation, if possible;
   (b) The alleged perpetrator's account of the situation, if available;
   (c) The information supplied by collateral contact;
   (d) Records and documents;
   (e) The assessment information;
   (f) Previous reports involving the adult or alleged perpetrator; and
   (g) Other information relevant to the protection of an adult.
   (2) The findings of the adult protective service investigation shall be:
      (a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and
      (b) Documented on the cabinet's database.
   (3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:
      (a) The DPP-115; and
      (b) A narrative documenting:
         1. The investigation; and
         2. Findings of the investigation;
      (c) An issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan;
      (d) At the consent of the adult; and
      (e) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings. (1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:
   (a) Adult; and
   (b) Abuse;
   (c) Neglect; or
   (d) Exploitation.
   (2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of [find and] substantiate abuse, neglect, or exploitation.
   (3) A finding made by cabinet staff [The cabinet shall not exclude evidence in accordance with KRS 209.030;]
      (a) Designated regional cabinet staff shall determine whether the cabinet shall not be a judicial finding.
      (4) Cabinet supervisory staff shall review and approve a finding of an investigation or prior to its finalization [and]; the designated regional cabinet staff's supervisor or designee shall review and approve the final findings of the investigation, if possible.
Section 6. Opening a Case. (1) A case may be opened:
(a) As a result of a protective service investigation; or
(b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.
(2) The decision to open a case shall be based on:
(a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or
(b) Need for involuntary emergency protective services.
(3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.
(4) Emergency protective services shall be provided in accordance with KRS 209.110.
(5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:
(a) Designated regional cabinet staff;
(b) Family members;
(c) Friends;
(d) Community partners; or
(e) Other individuals requested by the adult.
(6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:
(a) Initiate a case plan with the adult; and
(b) Submit the plan to supervisory staff for approval.

Section 7. Referrals for Criminal Prosecution. (1) The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth attorneys and county attorneys for consideration of criminal prosecution in accordance with KRS 209.180.
(2) Designated regional cabinet staff shall minimize the involvement of an adult in legal proceedings and hearings in accordance with KRS 209.180(4).

Section 8. Restraining Order or Injunctive Relief. (1) A court may issue a restraining order or injunctive relief for the protection of an adult in accordance with KRS 209.040.
(2) If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 9. Guardianship or Conservatorship of Disabled Persons. (1) In an effort to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:
(a) Manage personal affairs;
(b) Manage financial affairs; or
(c) Carry out the activities of daily living.
(2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.
(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.520(1).

Section 10. Involuntary Hospitalization. (1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.
(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:
(a) The adult lacks the capacity to consent or refuses mental health treatment;
(b) Other resources are not available;
(c) Another petitioner is absent or unavailable; and
(d) Prior cabinet supervisory approval is obtained.

Section 11. Cabinet Collaboration. (1) The cabinet shall consult and share information with local agencies and advocacy groups regarding alleged adult abuse, neglect, or exploitation, including issues against the elderly, in accordance with KRS 209.030(1).
(2) The cabinet shall create an Elder Abuse Committee in accordance with KRS 209.005.

Section 12. Reporting. (1) Reports of adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:
(a) Use in future investigations; and
(b) Annual reporting requirements as specified in KRS 209.030(2).
(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(2)(b).
(a) In addition to the information required by KRS 209.030(2)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:
1. Age;
2. Demographics;
3. Type of abuse;
4. The number of:
   a. Accepted reports; and
   b. Substantiated reports; and
5. Other information relevant to the protection of an adult.
(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning. (1) The cabinet's decision to close an adult protective service case shall be based upon:
(a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;
(b) The request of the adult, or
(c) A lack of legal authority to obtain court ordered cooperation from the adult.
(2) An adult shall be:
(a) Notified in writing of the decision to close the protective service case; and
(b) Advised of the right to request a service appeal in accordance with Section 13(14) of this administrative regulation.
(3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:
(a) At the consent of the adult; and
(b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.
(4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of maintaining preventive measures.

Section 14. Appeal Rights. A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1.320, Section 2.

Section 15. Incorporation by Reference. (1) "DPP-115, Confidential Suspected Abuse/Neglect, Dependency, or Exploitation Reporting Form", edition 5/05, is incorporated by reference.
(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.

Section 1. Historical File. (1) A statewide historical file of adult abuse, neglect, exploitation and spouse abuse reports shall be maintained by the cabinet for use in a possible future investigation involving one (1) or more of the same parties.
(2) This information shall be obtained from the DSS 282, Adult Protective Services Investigation, herein incorporated by reference.

Section 2. Receiving the Report. (1) When receiving a report of suspected adult abuse, neglect, exploitation or spouse abuse the worker shall make every effort to obtain the information to comply with KRS 209.020(2) and other information that may assist in determining if the adult may be in a state of emergency and in immediate need of protective services. The worker may:
(a) Advise the reporting source that it may not be possible to conduct an investigation if insufficient information is received, and
(b) Advise the reporting source that insufficient information may lead to the inability to locate or identify the adult needing protective services.
(2) When the report is received and required information secured, the worker shall:
(a) Prepare a written intake report on the DSS 116, Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form, herein incorporated by reference, concerning the adult alleged to be abused, neglected or exploited;
(b) Submit the DSS 116 to the family services office supervisor or designee, for determination of assignment for investigation; and
(c) Send a copy of the DSS 116 to the appropriate law enforcement agency pursuant to KRS 209.020(4) unless they are the originating reporting source.

Section 3. Adult Protective Services Investigations. (1) The Department for Community-Based Services or its designee shall conduct an investigation of a report of alleged abuse, neglect or exploitation of an adult and provide protective services, upon request. The investigation shall include contact with the alleged victim and may include contact with the alleged perpetrator and collateral.
(2) Information obtained as a result of a protective services investigation shall be kept confidential, pursuant to the provisions of KRS 209.140.4
(a) Requests for written information, except for court-ordered release, shall be handled through the open records process. Court orders for records may be responded to at the local office unless the worker has reason to question or contest the order. Requests for open records made by someone other than those listed in KRS 209.140 shall be accompanied with a release of information from the alleged victim or the alleged perpetrator.
(b) Requests for oral information may be denied if the alleged perpetrator does not determine the legitimacy of the individual or agency's need for the information. The worker may deny if a request is denied, the worker shall notify the appropriate supervisory staff and determine if probable cause exists to pursue a search warrant or other legal remedy. An employee of the cabinet shall not attempt to serve a search warrant.

Section 5. Results of the Investigation. (1) The worker, as appropriate, shall address the following when evaluating the results of the investigation:
(a) The alleged victim's account of the situation;
(b) The alleged perpetrator's account of the situation;
(c) The information supplied by collateral contact;
(d) Records and documents;
(e) The assessment information;
(f) Previous reports involving the alleged victim or alleged perpetrator; and
(g) Other factors which influence the worker's decision to take, or refrain from taking, steps to implement protective action.
(2) The findings of the adult protective services investigation shall be documented on the DSS 282 and a written report pursuant to KRS 209.090(4)(c) shall be maintained by the worker to include:
(a) The DSS 116, Confidential Suspected Abuse/Neglect, Dependency or Exploitation Reporting Form;
(b) The DSS 282, Adult Protective Services Investigation;
(c) A narrative documenting the investigation; and
Section 6. Opening a Case. (1) A case may be opened as a result of a protective services investigation when a person under 21 becomes a victim of abuse or neglect. The decision to open a case shall be based on: (a) the voluntary request or consent to be served; and (b) the need for involuntary emergency protective services. (2) There shall be a case plan developed with the young person and appropriate others in each case. Within fifteen (15) working days of the decision to open a case, the case plan shall be served to the young person and appropriate others. A copy of the case plan shall be given to the young person and appropriate others with a copy of the DSS-164, pursuant to KRS 209.030.

Section 7. Referrals for Criminal Prosecution. Substantiated reports of abuse, neglect or exploitation may be referred for consideration for criminal prosecution.

Section 8. Involuntary Emergency Protective Services. The need for involuntary protective services shall be served when a person under 21 becomes a victim of abuse or neglect. The voluntary order authorizing the provision of these services shall be served on the young person and appropriate others in each case. Within fifteen (15) working days of the decision to open a case, the case plan shall be served to the young person and appropriate others. A copy of the case plan shall be given to the young person and appropriate others with a copy of the DSS-164, pursuant to KRS 209.030.

Section 9. Restraining Order or Injunctive Relief. Pursuant to KRS 209.040 a court may issue a restraining order or injunctive relief upon proper application of the cabinet. Staff shall contact the office of the general counsel for advice and assistance in obtaining restraining orders or other forms of injunctive relief, if possible.

Section 10. Guardianship or Conservatorship of Disabled Persons. (1) In an attempt to provide appropriate protective services, the family services worker shall assess the need for guardianship when an individual is identified who appears unable to manage personal affairs or carry out the activities of daily living. (2) The worker may seek a protective service petition in court. (3) The family services worker, if he meets the qualification of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c), may be appointed by the court as a member of the interdisciplinary team and may be required to testify during disability court proceedings pursuant to KRS 335.640(1).

Section 11. Involuntary Hospitalization. (1) If the worker believes a client may need hospitalization for mental health reasons, the worker shall encourage the client to seek mental health treatment. (2) If a client refuses and all other resources are unavailable, the worker may file a petition for involuntary hospitalization pursuant to KRS Chapter 202A. Prior approval, if possible, shall be obtained from the service region administrator or designee.

Section 12. Domestic Violence and Abuse. Staff may assist individuals in petitioning the court for an order of protection pursuant to KRS 403.715 to 403.785. Reports received from law enforcement pursuant to KRS 403.784[1] that do not meet the criteria of KRS Chapter 202 may be assigned for assessment and service based on supervisory discretion. Reports received from the family support worker that do not meet the criteria of KRS Chapter 209 shall be assigned for assessment.


This material may be inspected, copied, or obtained at the Department for Community Based Services, Division of Protection and Permanency, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TOM EMBERTON, JR., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: January 11, 2006
FILED WITH LRC: January 13, 2006 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, 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, February 13, 2006)

922 KAR 5:102. Domestic violence protective services.

RELATES TO: KRS 61.872, 124A.010, Chapter 209
STATUTORY AUTHORITY: KRS 194A.050(1), 209A.030(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to adopt all administrative regulations necessary under applicable state laws to protect, defend, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 209A.030(1) authorizes the secretary to promulgate administrative regulations necessary for safeguarding the welfare of adults who have experienced domestic violence.

Section 1. Definitions. (1) "Abuse" is defined by KRS 209A.020(6).
(2) "Abuse or neglect inflicted by a spouse" is defined by KRS 209A.020(9).
(3) "Investigation" is defined by KRS 209A.020(7).
(4) "Neglect" is defined by KRS 209A.020(9).
(5) "Protective services" is defined by KRS 209A.020(5).
(7) "Records" is defined by KRS 209A.020(6).

Section 2. Receiving a Report. (1) An individual suspecting that an adult has suffered from domestic violence [inflicted or caused by a spouse] shall:
(a) Report to the cabinet in accordance with KRS 209A.030(2) and (3); and
(b) Provide the information specified in KRS 209A.030(4).
(2) The identity of the reporting individual shall remain confidential in accordance with KRS 209A.005(1). (3) Upon accepting a report for investigation of domestic violence [inflicted or caused by a spouse], the cabinet shall:
(a) Initiate an investigation of the complaint in accordance with KRS 209A.030(5); and
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(b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate the investigation.

(6) If a report of domestic violence alleges abuse or neglect, as defined in KRS 209A.020(6) and (9), the cabinet shall initiate an investigation.

(7) The following criteria shall be used in identifying a report of abuse or neglect not requiring a domestic violence protective service investigation:

(a) There is insufficient information to:
   1. Identify or locate the adult; or
   2. Explore leads to identify or locate the adult; or
(b) The report does not meet the statutory definitions of:
   1. Adult; and
   2. Abuse; or
   b. Neglect.

(7) [169] If the report is not accepted for investigation of alleged domestic violence [initiated by a spouse], designated regional cabinet staff may refer the reporting source to:

(a) Community resources, including domestic violence shelters that meet standards specified in KRS 5042; or
(b) General adult services in accordance with KRS 5042.090; or
(c) Adult protective services in accordance with KRS 5042.090.

(8) [169] For a report accepted for investigation of alleged domestic violence [initiated by a spouse], designated regional cabinet staff shall prepare an intake report in accordance with KRS 5042.030. The intake report shall be forwarded to the cabinet office.

(9) [169] If a victim of domestic violence does not meet the criteria established in KRS Chapter 209A, the victim may be serviced by referring the victim to:

(a) Community resources, including domestic violence shelters that meet the standards specified in KRS 5042; or
(b) General adult services in accordance with KRS 5042.090; or
(c) Adult protective services in accordance with KRS 5042.090.

Section 3. Domestic Violence Protective Service Investigations.

(1) If the contact does not pose a safety concern for the adult or cabinet staff, a domestic violence protective service investigation may include contact with the alleged perpetrator and collateral with the expressed permission of the adult, if the contact does not pose a safety concern for the adult or cabinet staff.

(2) Information obtained as a result of a domestic violence protective service investigation shall:

(a) Not be divulged to anyone except as specified in KRS 209A.080; and
(b) Be kept confidential in accordance with KRS 209A.070.

(3) Requests for written information of the domestic violence protective service investigation except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.

(5) [145] Designated regional cabinet staff shall initiate the investigation of a report of domestic violence [initiated by a spouse]. If the accepted report indicates that an adult is:

(a) At risk of immediate and serious physical harm or death, the investigation shall be initiated within (1) hour; or
(b) Not at risk of immediate and serious physical harm or death, the investigation shall be initiated within forty-eight (48) hours.

(6) [165] Designated regional cabinet staff shall have access to an adult's records in accordance with KRS 209A.030(7).

(7) [165] If an adult fails to consent to an investigation and refuses entry to the premises, in accordance with KRS 209A.030(5), a search warrant may be issued.

(7) If permission [for an investigation] is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.

(8) [165] The cabinet shall obtain a written voluntary statement of domestic violence [initiated by a spouse] if the adult, witness, or alleged perpetrator is willing to provide the written statement; and

(b) The cabinet shall inform the adult, witness, or alleged perpetrator that:

1. Statement may be shared with appropriate authorized agencies; and
2. Individual may be required to testify in a court of law.

(9) [165] If the cabinet is investigating a report of alleged domestic violence [initiated by a spouse] resulting in death, designated regional cabinet staff shall:

(a) Examine the coroner's or doctor's report;
(b) Obtain a copy of the death certificate for the case record, if possible; and
(c) Notify the commissioner or designee [designated cabinet staff].

Section 4. Results of the Investigation. (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:

(a) The adult's account of the situation, if possible;
(b) The alleged perpetrator's account of the situation, if available;
(c) The information supplied by collateral contact;
(d) Records and documents;
(e) The assessment information;
(f) Previous reports involving the adult or alleged perpetrator; and
(g) Other information relevant to the protection of an adult.

(2) The findings of the domestic violence protective service investigation shall:

(a) Shall be documented on the cabinet's database; and
(b) May be shared in accordance with the confidentiality requirements of KRS 209A.080 [with appropriate authorized agencies, as specified in KRS 209A.020(10)]

(3) [165] Designated regional cabinet staff shall maintain a written record, as specified in KRS 209A.030(5).

(4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

(a) At the consent of the adult; and
(b) In an effort to prevent a recurrence of domestic violence [initiated by a spouse].

Section 5. Substantiation Criteria and Submission of Findings.

(1) Upon determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:

(a) Adult; and
(b) Abuse; or
(c) Neglect.

(2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of [false] and substantiate domestic violence [initiated by a spouse].

(2) A finding made by cabinet staff [designated regional cabinet staff] shall not be a judicial finding.

(3) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

(4) The designated regional cabinet staff, its supervisor, or designee shall review and approve the final finding of the investigation.

(5) The cabinet shall not exclude evidence in accordance with KRS 209A.060.

(6) Immunity from civil or criminal liability shall be in accordance with KRS 209A.060.

Section 6. Opening a Case. (1) The cabinet may open a case as a result of a domestic violence protective service investigation if the cabinet receives a voluntary request for, or acceptance of, services by the adult who needs protective services.

(2) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:

(a) Designated regional cabinet staff;
(b) Family members;
(c) Family friends;
(d) Community partners; or
(e) Other individuals requested by the adult.
(3) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:
   (a) Initiate a case plan with the adult; and
   (b) Submit the plan to supervisory staff for approval.

Section 7. Case Closure and Aftercare Planning. (1) The cabinet's decision to close a domestic violence protective service case shall be based upon:
   (a) Evidence that the factors resulting in domestic violence [inflicted by a spouse] are resolved to the extent that the adult's needs, as defined by the adult have been met; or
   (b) The request of the adult; or
   (c) A lack of legal authority to obtain court-ordered cooperation from the adult.

(2) An adult shall be:
   (a) Notified in writing of the decision to close the domestic violence protective service case, after a safe address has been determined; and
   (b) Advised of the right to request a service appeal in accordance with Section 8 of this administrative regulation.

(3) If a domestic violence protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:
   (a) At the consent of the adult; and
   (b) In an effort to prevent a recurrence of domestic violence [inflicted by a spouse].

(4) If the cabinet closes the domestic violence protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 8. Appeal Rights. A victim of domestic violence [inflicted by a spouse] may request a service appeal in accordance with 922 KAR 1:320, Section 2.

TOM EMBERTON, Jr., Commissioner
MIKE BURNSIDE, Undersecretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: January 11, 2006
FILED WITH LRC: January 13, 2006 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street SW-B, Frankfort, Kentucky 40621, phone 502-564-7905, fax 502-564-7573.
ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Division of Forestry
(Amended After Comments)

402 KAR 3:020. Master logger program.

RELATES TO: KRS 149.330, 149.332, 149.334, 149.342,
149.344, 149.345, 149.346, 149.350, 149.355, 224.10-100
STATUTORY AUTHORITY: KRS 149.334, 149.342
NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.334
authorizes the cabinet to promulgate administrative regulations
relating to the Kentucky Forest Conservation Act. KRS 149.342
requires that [after-two-(2)-years-from-the-Act's-effective-date], no
person shall conduct timber harvesting operations within the
Commonwealth unless there is on the site at least one (1) logger in
charge of the harvest who has completed the master logger pro-
gram or has received a temporary master logger designation. This
administrative regulation establishes [a necessary-to-establish] the
education and training requirements for the master logger program
and the requirements for the temporary master logger designation.

Section 1. Master Logger Program Training Course. (41) The master
logger program training course shall consist of three (3)
one (1) day sessions covering the following topics:

(a) First aid and adult-cardiopulmonary resuscitation (CPR)
which shall be taught by certified American Red Cross instructors;
(b) Information on the environmental impacts of timber
harvesting operations and the use of best management
practices to reduce or eliminate potential adverse effects of timber
harvesting operations on water quality; [and]

(2) Laws and administrative regulations impacting logging
operations; and

(3) Professional logger safety education.

(c) A person who successfully completes the first aid and adult
CPR portions of the course shall be certified in first aid and CPR.
(d) A person who holds current first aid and adult CPR certifi-
cations is not required to attend the first aid and CPR portions
of the course, and shall present copies of current certifications
with the registration form required in Section 2 of this adminis-
trative regulation

Section 2. Registration Form and Fee. A person wishing to
attend the master logging program training course shall complete
and file a registration form accompanied by a fee of eighty-five (85)
fifty (50)-dollars.

Section 3. Designation as Master Logger. A person who suc-
cessfully completes the master logger program training course
shall be designated a master logger. This designation shall be for
a period of three (3) years from the date of completion of the course.

Section 4. Designation Card. (1) The Division of Forestry shall
issue a wallet-sized master logger designation card to a person
who successfully completes the master logger program training
course.

(2) The division shall issue a designation card to a person who
has previously completed the master logger program in ac-
cordance with KRS 149.342(7) [149.342(9)].

(3) The master logger in charge of a timber harvesting opera-
tion shall maintain a current master logger designation card, along
with a photo identification card such as a driver's license, on his
person at all times when he is on the timber harvesting operation
site.

Section 5. Reciprocity. A person who has successfully com-
pleted a program in another state which is equivalent to the master
logger program training course under Section 1 of this adminis-
trative regulation may apply for the issuance of a designation card
under Section 4 of this administrative regulation by filing an appli-
cation and paying a fee of fifty (50) dollars. The division shall de-
termine that the program is equivalent and that the person suc-
cessfully completed the program prior to issuing a designation card
under Section 4 of this administrative regulation.

Section 6. Continuing Education Requirements. (1) A person
who has successfully completed the master logger program train-
ing course and who wishes to renew his master logger designation

card, shall complete six (6) hours of continuing master logger edu-
cation every three (3) years. Continuing master logger education
shall consist of one (1) or more of the following subjects: forest
management, silviculture, forest health, ecosystem management,
timber harvesting, laws and regulations relating to timber harvest-
ing and water quality, logging safety, or advanced best manage-
ment practices.

(2) [A person who meets the requirements of KRS 149.342(6)]
shall satisfy the continuing education requirements of subsection
(1) of this section by July 15, 2003.

(3) Application for renewal and fee. A person wishing to renew
a master logger designation and receive a current card shall com-
plete the continuing education requirements in subsection (1)
subsections (1) or (2) of this section, file an application, and pay a fee
of twenty-five (25) dollars prior to expiration of his designation card.

Section 7. Revocation of Designation as Master Logger. The

cabinet shall revoke the designation card of a master logger who fails
to timely apply for renewal, or to comply with the continuing
education requirements in Section 6 of this administrative regula-
tion. The cabinet shall remove the name of the master logger from
the list maintained by the division pursuant to KRS 149.342(6)
[149.342(4)].

Section 8. Reinstatement of Designation. A person whose
master logger designation has been revoked shall be required to
attend and successfully complete the master logger training course
under Sections 1 and 2 of this administrative regulation in order to
have his designation as a master logger reinstated.

Section 9. Kentucky Temporary Master Logger. (1) A person
who wishes to be designated a Kentucky temporary master logger
shall:

(a) Submit an application for designation as a Kentucky tempo-
rary master logger and pay a fee of fifty (50) dollars; and

(b) Register and pay the applicable fee in accordance with
Section 2 of this administrative regulation for a three (3) day Ken-
tucky master logger training program, or an approved equivalent
approximate training program, scheduled to be held within four (4)
months after the date of registration for the training program;

(2)(a) The applicant shall be designated a Kentucky temporary
master logger upon issuance of the Kentucky temporary master
logger designation card by the Division of Forestry, and may then
begin serving as the temporary master logger on-site and in charge
of timber harvesting operations.

(b) The designation card shall state the name and address of
the person designated, the date of issuance, and the date of expi-
ration of the designation.

(c) The Kentucky temporary master logger designation shall
expire four (4) months from the date of issuance, and no renewal
shall be issued. A person shall not receive more than one (1)
Kentucky temporary master logger designation in his lifetime.

(d) The Kentucky temporary master logger in charge of a tim-
ber harvesting operation shall maintain a valid Kentucky temporary
master logger designation card, along with a photo identification
card such as a driver's license, on his person at all times when he is
on the timber harvesting operation site.

(3)(a) The logger or operator of a timber harvesting operation
who uses a Kentucky temporary master logger shall, prior to be-
genning the harvest, notify the appropriate local district office of the

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Division of Forestry of each operation on which the temporary master logger will be on-site and in charge.

(b) Notification shall be made by letter, facsimile, email, telephone conversation, or in person. A message left on an answering machine or voice mail service shall not constitute valid notification.

(c) In the registration, the logo or operator shall identify the approximate date of the harvest and the location and identity of the timber harvesting site in sufficient detail to enable the Division to locate the site in the field. The location shall be identified in at least one of the following ways:

1. Provide the name of the landowner, the county, and the latitude and longitude of the site to the nearest one-tenth (1/10) of a minute or the UTM coordinates to the nearest 100 meters;

2. Provide the location of the landowner, the county, and a USGS 7.5-minute topographic quadrangle map or reproduction thereof, marked to show the name of the quadrangle map, the map scale, the north arrow, and the exact location of the site, or

3. Provide the name of the landowner, the county, the nearest named community and the approximate distance and direction from the community to the site, the name and number of the nearest highway or street, and a description of how to reach the site from the nearest highway or other appropriately labeled;

(d) The cabinet shall revoke the designation of the Kentucky temporary master logger on-site and in charge of timber harvesting operations if harvest activity is started on the site before valid notification is provided in accordance with this subsection.

(4) A logger or operator who has started harvest activity without a Kentucky master logger or Kentucky temporary master logger on-site and in charge of harvest activities shall not be eligible to receive a Kentucky temporary master logger designation, and shall not begin to use a Kentucky temporary master logger on the site.

Section 10, (9). Incorporation by Reference. (1) The following material is incorporated by reference:

(a) *Kentucky Master Logger Registration Form*, November 1999 (November 2006), Filing 2005-190;

(b) *Kentucky Master Logger Reciprocity Application Form*, November 1998 (November 1998); and

(c) *Kentucky Master Logger Renewal Form*, March 1999; and


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, [printed, copied, or obtained] at the Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.}

JOHN W. CLAY, Deputy Secretary
For LaJuana S. Wilcher, Secretary
APPROVED BY AGENCY: February 7, 2008
FILED WITH LRC: February 10, 2006 at 8 a.m.
CONTACT PERSON: Larry Lowe, Timber Harvesting Compliance Section, Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, phone (502) 564-4496, fax (502) 564-6553.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Lowe

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 149.342 requires that no person shall conduct timber harvesting operations within the Commonwealth unless there is on the site at least 1 logger in charge of the harvest who has completed the master logger program or has received a temporary master logger designation. This administrative regulation establishes the education and training requirements for the master logger program and the requirements for the temporary master logger designation.

(b) The necessity of this administrative regulation: The master logger program educates loggers on the environmental impacts of timber harvesting operations and requires the use of best management practices to reduce or eliminate potential adverse effects of timber harvesting operations on water quality.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 149.334 authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 149.342 requires that no person shall conduct timber harvesting operations within the Commonwealth unless there is on the site at least one logger in charge of the harvest who has completed the master logger program or has received a temporary master logger designation. This administrative regulation establishes the education and training requirements for the master logger program and the requirements for the temporary master logger designation.

(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 establishes the requirements to receive temporary master logger designation. It also includes a requirement for loggers or operators who use a temporary master logger to notify the Division of Forestry prior to any commercial timber harvest that will be directed by a temporary master logger. It requires the person applying for a temporary master logger designation to submit a form and pay a $50.00 fee. In addition, the proposed regulation raises the registration fee for the master logger training to $85.00. It changes the requirements for the 3-day master logger training program by eliminating instruction on first aid and Adult CPR while adding instruction on laws and administrative regulations impacting logging operations.

(b) The necessity of the amendment to this administrative regulation: KRS 149.342 requires a person seeking to become a temporary master logger to attend a temporary master logger training program. The master logger program offers 6 to 8, 3-day programs each year at various locations around the state. People who wanted to start logging between the scheduled programs either had to wait until the program was offered in their area or travel long distances to the next available class. The estimated cost to conduct the 3-day training is over $300.00 per student. The current $30.00 fee per student is inadequate to cover the costs of the training. The proposed increase of $85.00 will not cover the entire cost, but it will provide a necessary increase in funds to offset costs incurred by the University of Kentucky, Division of Forestry, and Kentucky Forest Industries Association.

(c) How the amendment conforms to the content of the authorizing statutes: The new amendment to KRS 149.344 passed during the 2005 GA requires the temporary status to expire 4 months from the date of issue and not be renewed. Loggers or operators who use a temporary master logger on their commercial timber harvests must notify the Division of Forestry prior to the harvest. The amended statute allows the cabinet to promulgate regulations to implement these provisions. KRS 149.342 allows for "a base fee for the program that bears a reasonable relationship to the cost of training."

(d) How the amendment will assist in the effective administration of the statutes: Changes in the administrative regulation will allow the cabinet to track and help new master loggers implement the appropriate best management practices (BMPs) for water quality while encouraging them to work with the cabinet rather than operate without assistance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: New loggers or operators, loggers or operators that need a master logger for their current operations, loggers who have let their master logger designation expire, and forest industries that depend on a constant supply of wood.

(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: The temporary master logger status would help new loggers or operators wanting to start a business in the state. It could also help individuals who have let their master logger designation expire. It may help other logging contractors in areas where master loggers are in short supply. It will help wood-using companies by helping ensure an adequate supplier base.

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

(a) Initially: There will be administrative costs involved in temporary master logger designation due to the handling of the applications and tracking. There will be an additional workload on the
Division of Forestry because of the need to work closely with a temporary master logger to ensure their knowledge and implementation of best management practices for water quality.

(b) On a continuing basis: Same as above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The application fees will cover the administrative portion. General funds will be used for the enforcement of the 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: See above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, it establishes application fees for temporary master logger designation $50.00, and it increases fees for the 3-day master logger program from $50.00 to $85.00.

(9) TIERING: Is tiering applied? No, tiering was not used, because it is necessary for these requirements to apply equally to all entities with commercial timber harvesting.
FINANCE AND ADMINISTRATIVE CABINET
Department of Revenue (Amendment)


RELATES TO: KRS 42.470, 61.670-61.884, 131.020, 131.030,
131.041-131.081, 131.081(2), (9), (15), 131.110, 131.130,
131.130(3), (10), 131.155, 131.170, 131.181, 131.183, 131.190,
131.190(1), 131.340, 131.500, 131.500(1), (2), (3), (10),
131.510(1), (2)(a), 131.540, 132.020, 132.030, 132.040-132.080,
132.130-132.150, 132.190, 132.200, 132.215, 132.216, 132.220,
132.270, 132.290, 132.310, 132.320, 132.450, 132.487, 132.510,
132.820, 132.950, 133.045, 133.110, 133.120, 133.130, 133.240,
134.020, 134.390, 134.420, 134.430, 134.440, 134.500,
134.580(4), 134.800, 134.805, 134.810, 134.815,
134.820, 134.825, 134.830, 135.010, 135.050, 136.020,
136.030, 136.040, 136.050, 136.070, 136.071, 136.074, 136.050,
136.100, 136.115-136.150, 136.181-136.187, 136.1873, 136.310,
136.600-136.660, 136.130, 136.170, 136.165(2), 138.155,
138.4605, 138.470(4), (5), (6), 138.460, 138.530, 138.870,
138.880, and 138.4535.

Section 1. Administrative - Required Forms. (1) Revenue Form
KY-1345, "Handbook for Electronic Filers of Individual Income Tax
Returns, Tax Year 2005 [2004]" shall provide information to assist
tax preparers and transmitters in the submission of 2005 [2004]
Federal and Kentucky Individual Income Tax Returns.

(2) Revenue Form 10A001, "Request to Inspect Public
Records", shall be completed by the public to request access to public
records specified on the form.

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

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

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

(a) Employer's Kentucky withholding;
(b) Corporation income [and license];
(c) Motor vehicle tire fee; and
(d) Sales and use.

(6) Revenue Form 10A100CS, "Kentucky Tax Registration Application",
shall be used to apply for tax registration of the fol-
lowing taxes:

(a) Employer's Kentucky withholding;
(b) Corporation income [and license];
(c) Motor vehicle tire fee; and
(d) Sales and use.

(7) Revenue Form 10A100-1, "Instructions for Kentucky Tax
Registration Application", provides instructions for the proper
completion of Revenue Form 10A100, "Kentucky Tax Registration
Application for Withholding, Corporation, Sales and Use Taxes,
and Motor Vehicle Tire Fee.

(8) Revenue Form 10A100CS-1, "Instructions for Kentucky Tax
Registration Application", provides instructions for the proper
completion of Revenue Form 10A100CS, "Kentucky Tax Registration
Application for Withholding, Corporation, Sales and Use Taxes,
and Motor Vehicle Tire Fee".

(9) Revenue Form 10A100-8, "Kentucky Tax Registration
Supplemental Information Schedule" shall be completed by per-
sons submitting Revenue Form 10A100 or 10A100CS to provide
additional business information.

(10) Revenue Form 10A101, "Kentucky General Business
License Application", shall be completed by every person required
to obtain a seller's permit as provided in KRS 139.240 and every
person required to register and collect Kentucky use tax under
KRS 139.340.

(11) Revenue Form 10A170, "Request For Notification of
Administrative Regulation Filing" shall be used by individuals to re-
quest receipt of copies of ordinary administrative regulations filed
with the Legislative Research Commission by the Department of
Revenue.

(12) Revenue Form 10A700, "Kentucky Tax Amnesty Application",
shall be completed as application for the Tax Amnesty Program
offered between August 1, 2002 and September 30, 2002.

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

(14) Revenue Form 10F710, "Important Information Regarding
Your Tax Amnesty Application", shall provide the public with infor-
mation relating to the Kentucky Tax Amnesty Program.

(15) Revenue Form 12A012, "Receipt of Seized Property",
shall be presented for execution to the taxpayer receiving returned
property from the Kentucky Department of Revenue that was pre-
viously seized for failure to pay taxes in order to establish docu-
mentation that the property was returned to the taxpayer.

(16) Revenue Form 12A018, "Kentucky Department of Reven-
ue Offer in Settlement", shall be presented for execution to per-
sions requesting to settle their tax liabilities for less than the delin-
quent tax liability based upon doubt as to collectibility or doubt as
to liability.

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

(18) Revenue Form 12A107, "Notice of Sale", shall be pre-
sented to the owner of seized property, the newspaper with the
highest circulation for that area, and posted at the courthouse, at
three (3) other public places within the county, and where the se-
izure was made, for the purpose of notifying the property owner,
and advertising to the public the sale of the seized property.
(19) Revenue Form 12A109, "Release of Levy", shall be presented to the bank or third party on which the levy was served for the purpose of releasing the seized property.

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

(21) Revenue Form 12A2500, "Kentucky Individual Income Tax Installment Agreement Request", shall be used by a taxpayer requesting to pay Kentucky tax liability in installments.

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

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

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

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

(26) Revenue Form 12A504, "Personal Assessment of Corporate Officer", shall be presented to a corporate officer for the purpose of establishing responsibility of payment of trust taxes owed to the Commonwealth.

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

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

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

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

(31) Revenue Form 12A509, "Notification of Delinquent Taxpayer", shall be presented to the Mines and Minerals district office and the Mines and Mineral's office located in Frankfort, for the purpose of notifying the Mines and Mineral's Department that the Kentucky Department of Revenue is requesting that a mine license not be renewed, and notification to the entity itself for nonpayment or filing of taxes owed to the Commonwealth.

(32) Revenue Form 12A510, "Guidelines for Wage Levy Processing", shall be presented to employers to explain how to process a wage levy on an employee.

(33) Revenue Form 12A511, "Guidelines for Bank Levy Processing", shall be presented to banks to explain how to process a bank levy.

(34) Revenue Form 12A512, "Confidential Agent Appointment", shall be presented to an agent of the taxpayer who desires to represent a taxpayer for the purpose of resolving tax issues.

(35) Revenue Form 12A513, "Nexus Questionnaire", shall be presented to companies who are unsure if they have a Kentucky tax presence for the purpose of establishing nexus with the state.

(36) Revenue Form 12A514, "Questionnaires for Persons Relative to a Notice of Assessment", shall be presented to an officer of a corporation for the purpose of resolving responsibility of the trust taxes owed to the Commonwealth.

(37) Revenue Form 12A516, "Requirements for Agreed Judgments", shall be presented to a business owner against whom the Kentucky Department of Revenue has a judgment for taxes for the purpose of allowing the business owner to make installment payments approved through the Franklin Circuit Court.

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

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

(40) Revenue Form 12A519, "Proof of Claim", shall be presented to the bankruptcy courts for the purpose of asserting the Kentucky Department of Revenue's claim upon the taxpayer's assets for the purpose of delinquent taxes.

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

(42) Revenue Form 12A638(l), "Instructions for Completing Statement of Financial Condition for Individuals", provides instructions for completing Revenue Form 12A638.

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

(44) Revenue Form 12A639(l), "Instructions for Completing Statement of Financial Condition for Businesses", provides instructions for completing Revenue Form 12A639.

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

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

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

(48) Revenue Form 21A050, "Business Account Numbers", shall be issued to business taxpayers to confirm processing of the Kentucky Tax Registration Application for Individual Income Tax Employer Withholding, Corporation Income and License, Coal Surface and Proportionate Tax Attesting, and to advise as to the account numbers assigned by the department.

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

(50) Revenue Form 31A004, "Auditor Record of Money Receipt Issued", shall be used by the taxpayer and the auditor to acknowledge payment of taxes determined to be tentatively due at the time of an audit.

(51) Revenue Form 31A010, "Sales Tax and Electronic Data Questionnaire", shall be used to ascertain the capability of taxpayer records to facilitate audit through use of electronic data.

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

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

(54) Revenue Form 31A149, "Agreement Fixing Period of Limitation Upon Assessment of Sales, Use or Severance Tax", shall be completed by a taxpayer and a representative of the Ken-
larity engaged in business in Kentucky to register for the Kentucky Bank Franchise Tax.
(2) Revenue Form 73A801, "2005 [1994] Bank Franchise Tax Return", shall be used by financial institutions to determine the net capital and Kentucky Bank Franchise Tax due for the calendar year 2005 [1994].
(3) Revenue Form 73A8011, "2005 [1994] Kentucky Bank Franchise Tax Forms and Instructions Packet", provides in a single packet the forms used by financial institutions to register for the Kentucky Bank Franchise Tax, to determine the net capital and annual tax due, and to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.
(4) Revenue Form 73A802, "Application for Ninety (90) Day Extension of Time to File Kentucky Bank Franchise Tax Return", shall be used by financial institutions to request a ninety (90) day extension of time to file the Kentucky Bank Franchise Tax Return.

Section 4. Cigarette Tax - Required Forms. (1) Revenue Form 73A181, "Cigarette Licenses Application", shall be used by persons intending in acting as a cigarette wholesaler, subjobber, vending machine operator, or unclassified acquirer to apply for the necessary license.
(2) Revenue Form 73A190, "Cigarette License", shall be used by the Department of Revenue to give evidence to cigarette wholesalers, subjobbers, vending machine operators, transporters and unclassified acquirers that they have been granted the appropriate license.
(3) Revenue Form 73A404, "Cigarette Tax Stamps or Meter Units Order Form", shall be used by licensed cigarette wholesalers or unclassified acquirers to order cigarette tax stamps.
(4) Revenue Form 73A406, "Cigarette Tax Credit Certificate", shall be used by the Department of Revenue to give credit to a licensed cigarette wholesaler or unclassified acquirer for cigarette tax stamps returned or destroyed.
(5) Revenue Form 73A409, "Cigarette Evidence/Property Receipt", shall be used by compliance officers and the property owner to acknowledge custody of seized goods.
(6) Revenue Form 73A420, "Monthly Report of Cigarette Wholesaler and Wholesaler's Monthly Report of Nonparticipating Manufacturer Cigarette Sales in Kentucky", shall be used by a licensed cigarette wholesaler to report cigarette inventory, tax stamp reconciliation, and liability for cigarette administration and enforcement fee and to report cigarettes that were purchased from manufacturers and importers of cigarettes who did not sign the Master Settlement Agreement (nonparticipating manufacturers).
(7) Revenue Form 73A420[i], "Instructions for Monthly Report of Cigarette Wholesaler" shall be used by cigarette wholesalers and nonparticipating manufacturers to file Revenue Form 73A420.
(8) Revenue Form 73A421, "Cigarette Inventory Floor Tax", shall be used by cigarette retailers or licensees to report cigarette inventories and the one-time inventory floor tax.
(9) Revenue Form 73A422, "Monthly Report of Other Tobacco Products and Snuff", shall be used by cigarette licensees to report gross receipts from other tobacco products, total units of snuff sold, and tax liability.
(10) Revenue Form 73B401, "Cigarette Tax Credit Claim Wholesalee's Affidavit", shall be signed by a licensed cigarette wholesaler attesting that the reported tax evidence did/did not have the 27 cents surtax paid on it.

(2) Revenue Form 41A720A, Schedule A, Apportionment and Allocation", shall be used by corporations doing business (which have proper sales and use tax receipt) within and without of Kentucky to apportion and allocate net income to Kentucky in accordance with KRS 141.120.
(3) Revenue Form 41A720C, "Schedule C, Coal Conversion Tax Credit", shall be used by corporations to compute the credit allowed by KRS 141.041 for coal used or substituted for other fuels
in an eligible heating facility as described by KRS 141.041(1).
(4) Revenue Form 41A720C, "Schedule CI, Application for Coal Incentive Tax Credit", shall be used by taxpayers to request approval for the amount of credit allowed by KRS 141.0405 for the purchase of Kentucky coal used by the company to generate electricity.
(6) Revenue Form 41A720CR, "Schedule CR, Pro Forma Federal Consolidated Return Schedule", shall be used by a taxpayer whose common parent is a C corporation filing a consolidated return.
(2) Revenue Form 41A720ES, "Form 720ES, 2005 Kentucky Corporation Income Tax Estimated Tax Voucher", shall be used by corporations to submit payments of estimated corporate income tax as required by KRS 141.044.
(8) Revenue Form 41A720EZC, "Schedule EZC, Enterprise Zone Tax Credit" shall be used by corporations to determine the credit allowed to qualified businesses in accordance with KRS 156.45-100.
(2) Revenue Form 41A720HH, "Schedule HH, Kentucky Housing for Homeless Families Deduction", shall be used by individuals, corporations, fiduciaries, and partnerships to determine the credit allowed by KRS 141.0292.
(10) Revenue Form 41A720BIO, "Schedule BIO, Application and Certificate of Income Tax Credit Boguelis", shall be used by taxpayers filing a consolidated return to determine the credit allowed by KRS 141.0292.
(11) Revenue Form 41A720BIO (K-1), "Schedule BIO (K-1), Distributive Share of Approved Boguelis and/or Blended Boguelis Tax Credit", shall be used by general partners to report distributive share of Boguelis Tax Credit to general partners.
(12) Revenue Form 41A720KCH, "Schedule KCH, Kentucky Consolidated Return Schedule", shall be used by taxpayers filing a consolidated return whose common parent is a C corporation.
(13) Revenue Form 41A720KCR-C, "Schedule KCR-C, Kentucky Consolidated Return Schedule Continuation Sheet", shall be used for taxpayers filing a consolidated return whose common parent is a C corporation.
(14) Revenue Form 41A720NOL, "Schedule NOL, Net Operating Loss Schedule", shall be used by a corporation with a current year net operating loss or net operating loss carry forward.
(15) Revenue Form 41A720VERB, "Schedule VERB, Voluntary Environmental Remediation Tax Credit (Brownfields)", shall be used by a entity claiming a tax credit provided by KRS 141.418.
(16) Revenue Form 41A720VERB (K-1), "Schedule VERB (K-1), Distributive Share of Approved Voluntary Environmental Remediation Tax Credit", shall be used by a general partnership to allocate distributive share of credit to general partners.
(17) Revenue Form 41A720VERB-S, "Schedule VERB-S, Voluntary Environmental Remediation Tax Credit (Brownfields) Expenditures Summary Schedule", shall be used by a taxpayer to list the expenditures incurred at a qualifying voluntary environmental remediation property.
(19) Revenue Form 41A720OR, "Schedule OR, Qualified Research Facility Tax Credit", shall be used by corporations and partnerships to determine the credit against income tax liability allowed by KRS 141.395.
(20) Revenue Form 41A720OR (K-1), Pro Rata/Distributive Share of Approved Qualified Research Facility Tax Credit", shall be used by S Corporations and partnerships to compute each shareholder/partner's share of income tax credit for qualified costs of research facilities.
(21) Revenue Form 41A720RC, "Schedule RC, Application for Income Tax Credit for Recycling and/or Composting Equipment", shall be used by individuals, corporations, fiduciaries, and partnerships to request approval for the amount of credit allowed by KRS 141.390 for the purchase and installation of recycling or composting equipment or major recycling project. This form shall also be used by individuals, corporations and fiduciaries to substantiate and keep a record of the amount of approved credit claimed on their income tax return.
(22) Revenue Form 41A720RC(C), "Schedule RC - Part I Continuation", shall be used by individuals, corporations, fiduciaries, and partnerships to list additional equity sources for which approval of the credit allowed by KRS 141.390 is being requested.
(23) Revenue Form 41A720RC, "Instructions for Schedule RC", shall be used by taxpayers requesting approval of a recycling project or Major Recycling Project.
(24) Revenue Form 41A720RC (K-1), "Schedule RC (K-1), Pro Rata/Distributive Share of Approved Recycling and/or Composting Equipment Tax Credit", shall be used by S corporations and partnerships to report to each shareholder/partner their pro rata/distributive share of approved income tax credit for the purchase and installation of recycling or composting equipment. This form shall also be used by shareholders/partners to substantiate and keep a record of the amount of approved credit claimed on their income tax return.
(25) Revenue Form 41A720RC-R, "Schedule RC-R, Kentucky Disposition of Recycling or Composting Equipment Schedule", shall be used by taxpayers disposing of recycling or composting equipment before the end of the recapture period.
(26) Revenue Form 41A720RC-R (K-1), "Schedule RC-R (K-1), Pro Rata/Distributive Share of Disposition of Recycling and/or Composting Equipment Tax Credit/Recapture", shall be used by taxpayers disposing of recycling or composting equipment before the end of the recapture period.
(27) Revenue Form 41A720S, "Form 720S, 2005 [2004] Kentucky S Corporation Income [and License] Tax Return", shall be used by S corporations to determine the amount of income tax due in accordance with KRS 141.042 [ordinary income or losses] and to determine total shareholders' share of income, loss, credits, deductions, etc., for tax years beginning in 2005.
(28) [2004] This form shall also be used to determine the S corporation's income tax liability in accordance with KRS 141.040(6), if applicable and to determine license tax due in accordance with KRS 136.070.
(29) Revenue Form 41A720S1, "2005 [2004] Kentucky Corporation Income [and License] Tax Forms and Instructions Packet", provides in a single packet Form 720S, Kentucky Corporation Income [and License] Tax Return, other forms commonly used by corporations in conjunction with Form 720S and instructions for filing these forms. The packet also contains Revenue Form 62A376, Kentucky Intangible Property Tax-Return, and a brochure entitled "Your Rights as a Kentucky Taxpayer".
(30) Revenue Form 41A720S2, "2005 [2004] Kentucky S Corporation Income [and License] Tax Forms and Instructions Packet", provides in a single packet Form 720S, Kentucky S Corporation Income [and License] Tax Return, other forms commonly used by S corporations in conjunction with Form 720S and instructions for filing these forms. The packet also contains Revenue Form 62A376, Kentucky Intangible Property Tax-Return, and a brochure entitled "Your Rights as a Kentucky Taxpayer".
(31) Revenue Form 41A720S4, "Instructions for Filing Corporation Estimated Income Tax Voucher", are instructions used by corporations to determine the amount of estimated corporation income tax that is required to be paid In accordance with KRS 141.044.
(32) Revenue Form 41A720S16, "Schedule KREDA, Tax Credit Computation Schedule (For A KREDA Project of C Corporations)", shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to determine the credit against the Kentucky corporation income tax liability in accordance with KRS 141.347. Instructions shall be included on the back of the form.
(33) Revenue Form 41A720S17, "Schedule KREDA, Instructions for Filing KREDA Project Schedule for A KREDA Project", shall be used by corporations which have a Kentucky Rural Economic Development Act (KREDA) project to maintain a record of the debt service payments, wage assessment fees and income tax credits for the duration of the project. Instructions shall be included on the back of the form.
(33) [230] Revenue Form 41A720-S18, "Schedule KREDA-SP, Tax Computation Schedule (for a KREDA Project of a General Partnership [S-Corporations-Or-Partnerships])," shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Rural Economic Development Act (KREDA) project to determine the credit allowed against the Kentucky income tax liability in accordance with KRS 141.347. Instructions shall be included on the back of the form.

(34) [241] Revenue Form 41A720-S20, "Schedule KIDA, Tax Credit Computation Schedule (for a KIDA Project of C Corporations)," shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.400. Instructions shall be included on the back of the form.

(35) [239] Revenue Form 41A720-S21, "Schedule KIDA-T, Tracking Schedule for A KIDA Project," shall be used by corporations which have a Kentucky Industrial Development Act (KIDA) project to maintain a record of the debt service payments and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

(36) [234] Revenue Form 41A720-S22, "Schedule KIDA-SP, Tax Computation Schedule (for a KIDA Project of a General Partnership [S-Corporations-Or-Partnerships])," shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Industrial Development Act (KIDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.400. Instructions shall be included on the back of the form.

(37) [244] Revenue Form 41A720-S24, "Schedule KIRA, Tax Credit Computation Schedule (for A KIRA Project of C Corporations)," shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.403. Instructions shall be included on the back of the form.

(38) [246] Revenue Form 41A720-S25, "Schedule KIRA-T, Tracking Schedule for A KIRA Project," shall be used by corporations which have a Kentucky Industrial Revitalization Act (KIRA) project to maintain a record of the approved costs, wage assessment fees and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

(39) [246] Revenue Form 41A720-S26, "Schedule KIRA-SP, Tax Computation Schedule (for A KIRA Project of a General Partnership [S-Corporations-Or-Partnerships])," shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Industrial Revitalization Act (KIRA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.403. Instructions shall be included on the back of the form.

(40) [227] Revenue Form 41A720-S27, "Schedule KJDA, Tax Credit Computation Schedule (for A KJDA Project of C Corporations)," shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.407. Instructions shall be included on the back of the form.

(41) [226] Revenue Form 41A720-S28, "Schedule KJDA-T, Tracking Schedule for A KJDA Project," shall be used by corporations which have a Kentucky Jobs Development Act (KJDA) project to maintain a record of the approved costs, wage assessment fees, in-lieu-of credits and income tax credits for the duration of the project. Instructions shall be included on the back of the form.

(42) [222] Revenue Form 41A720-S29, "Schedule KJDA-SP, Tax Computation Schedule (for A KJDA Project of a General Partnership [S-Corporations-Or-Partnerships])," shall be used by a general partnership [S-corporations-and-partnerships] which has [have] a Kentucky Jobs Development Act (KJDA) project to determine the credit allowed against the Kentucky corporation income tax liability in accordance with KRS 141.407. Instructions shall be included on the back of the form.

(43) [301] Revenue Form 41A720-S30, "Schedule TCS, Tax Credit Summary Schedule (for C Corporations with More Than One (1) Economic Development Project)," shall be used by corporations which have more than one (1) economic development project to reflect the amount of credit claimed for each project for the taxable year. Instructions shall be included on the back of the form.

(44) [31] Revenue Form 41A720-S31, "Schedule KREA, Tax Credit Computation Schedule (for a KREA Project of E Corporations)," shall be used by corporations which have one or more economic development projects to determine total shareholders' share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects. Instructions shall be included on the back of the form.

(45) [319] Revenue Form 41A720-S32, "Schedule KIRA-T, Tax Credit Computation Schedule, License Tax (For a KIRA Project of Corporations)," shall be used by corporations which have entered into a Kentucky Revitalization agreement for a Kentucky Industrial Revitalization Act (KIRA) project to compute the allowable KIRA license tax credit.

(46) [319] Revenue Form 41A720-S35, "Schedule KRA, Tax Credit Computation Schedule (For a KRA Project of ICI Corporations)," shall be used by corporations which have entered into a Kentucky Reinvestment (KRA) project to compute the allowable KRA credit allowed against the Kentucky corporation income tax liability.

(47) [319] Revenue Form 41A720-S36, "Schedule KRA-L, Tax Credit Computation Schedule License Tax (For a KRA Project of Corporations)," shall be used by corporations which have entered into a Kentucky Reinvestment (KRA) project to compute the allowable KRA credit allowed against the Kentucky corporation license tax liability.

(48) [319] Revenue Form 41A720-S37, "Schedule KRA-T, Tracking Schedule for A KRA Project," shall be used by companies [C-Corporations] which have entered into a Kentucky Reinvestment (KRA) project to maintain a record of the balance of approved costs and income and license tax credits for the duration of the agreement.

(49) [319] Revenue Form 41A720-S40, "Schedule KEOZ, Tax Credit Computation Schedule (For a KEOZ Project of C Corporations)," shall be used by corporations which have entered into a Kentucky Economic Opportunity Zone (KEOZ) project to compute the allowable KEOZ credit allowed against the Kentucky corporation income tax liability.

(50) [319] Revenue Form 41A720-S41, "Schedule KEOZ-SP, Tax Computation Schedule (For a KEOZ Project of a General Partnership [S-Corporations-Or-Partnerships])," shall be used by any general [S-corporation-or-partnership] which has entered into a service and technology agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to determine the credit allowed against the Kentucky income tax liability.

(51) [319] Revenue Form 41A720-S42, "Schedule KEOZ-T, Tracking Schedule for a KEOZ Project," shall be used by any company which has entered into an agreement for a Kentucky Economic Opportunity Zone (KEOZ) Act project to maintain a record of the debt service payments, wage assessment fees, approved costs and income tax credits for the duration of the agreement.


(53) [409] Revenue Form 41A720S (K-1), "Schedule K-1 (Form 720S), 2005 [2004] Kentucky Shareholder's Share of Income, Credits, Deductions, Etc.," shall be used by S corporations to report to their shareholders the amount of income, credit, deduction, etc., that the shareholder should report for Kentucky income tax purposes. Instructions shall be included on the back of the form to assist the shareholder in preparing their Kentucky individual income tax return.

(54) [44] Revenue Form 41A720SL, "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income (and Liabilities) Tax Return," shall be used by corporations to request a six (6) month extension of time to file the Kentucky Corporation Income and License Tax Return. Instructions shall be included on the back of the form.

(55) Revenue Form 41A725, "Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return,"
shall be used by a single member individually-owned LLC to file corporation tax return in accordance with KRS 141.040.

(65) Revenue Form 41A725CP, "Schedule CP Form 725, Kentucky Single Member LLC Individually Owned Corporate Return Schedule", shall be used by a single member individual with multiple LLC entities to file corporation tax returns in accordance with KRS 141.040.

(66) Schedule KCR, (Form 725), "Kentucky Nexus Consolidated Return Schedule", shall be used by a single member individual with a LLC filing a nexus consolidated return or multiple LLC entities filing nexus consolidated returns.

(67) Schedule KCR-C (Form 725), "Kentucky Nexus Consolidated Return Schedule Continuation Sheet", shall be used as needed by a single member individual with a LLC filing a nexus consolidated return or multiple LLC entities filing nexus consolidated returns.

(68) Revenue Form 41A725SL, "Instructions for 2005 Kentucky Single Member LLC Individually Owned Corporate Income Tax Return", shall be used by single member LLC individually owned to file the 2005 Kentucky corporation income tax return and related schedules.

(69) Revenue Form 41A725SL-L, "2005 Kentucky Single Member LLC Individually Owned Corporate Income Tax Form and Instructions Packet", provides in a single packet Form 725, Kentucky Single Member LLC Individually Owned Corporation Income Tax Return, other forms commonly used by corporations in conjunction with Form 725, and instructions for filing these forms. The packet also contains a brochure entitled "Your Rights as a Kentucky Taxpayer".

(70) Revenue Form 41A720XX, "Form 720XX, Amended Kentucky Corporation Income Tax Return", shall be used by corporations to report changes to the Kentucky Corporation Income Tax Return, as previously filed.

(71) [448] Revenue Form 41A722, "Form 722, Election to File Consolidated Corporation Income Tax Return", shall be used by corporations to elect to file a consolidated Kentucky Income tax return in accordance with KRS 141.200.

(72) [444] Revenue Form 41A750, "Business Development Corporation Tax Return", shall be used by corporations organized under the provisions of KRS Chapter 155 to determine the business development tax in accordance with KRS 155.170.

(73) [446] Revenue Form 41A851K, "Form 851-K, Kentucky Affiliations and Payment Schedule", shall be used by corporations which are filing a consolidated Kentucky income tax return to identify the members of the affiliated group which are subject to the Kentucky corporation license tax and to list the amount of tax being paid for each corporation if payment is being submitted by a single check.

(74) [445] Revenue Form 42A797, "Kentucky Information Return for Calendar Year __", shall be used by corporations, in accordance with KRS 141.150 and 103 KAR 19.030, to report distributions of assets as a result of dissolution or liquidation. A separate form shall be prepared for each payee and filed with the Department of Revenue, and a copy shall be provided to the payee.

(75) [447] Revenue Form 42A799-01, "Form 796, Annual Income Information Return", shall be used by corporations, in accordance with KRS 141.150 and 103 KAR 19.030, to summarize the reports of distributions of assets as a result of dissolution or liquidation.

Section 6. Health Care Provider Tax. (1) Revenue Form 73A060, "Health Care Provider Tax Return" shall be used by taxpayers to file the gross revenues and compute the tax for the health care provider tax.

(2) [445] Revenue Form 73A060(I), "Instructions-Kentucky Health Care Provider Tax Return" shall be used by the taxpayers to determine if the service they provide is taxable, what tax rate is applicable, and which line to use for reporting.

(3) Revenue Form 73A061, "Kentucky Health Care Provider Application for Certificate of Registration" shall be completed by the taxpayer to register for the health care provider tax.

Section 7. Individual Income and Withholding Taxes. (1) Revenue Form 12A200, "Kentucky Individual Income Tax Installment Agreement Request" shall be submitted to the Department of Revenue to request an installment agreement to pay the tax, and "Application for Refund of Income Taxes" shall be presented to the Department of Revenue to request a refund of income taxes paid.

(2) Revenue Form 40A102, "2005 [2004] Application for Extension of Time to File Individual General Partnership and Fiduciary Income Tax Returns for Kentucky" shall be submitted to the Department of Revenue by individuals, partnerships, and fiduciaries prior to the date prescribed by law for filing a return to request an extension of time to file the return or to remit payment of tax due prior to the date the return is due.

(3) Revenue Form 40A125, "Request for Transfer of Individual Income Estimated Tax Payments to Corporation Income Estimated Tax", shall be used by individual partners, shareholders, or members to request transfer of individual estimated tax to corporation estimated tax.

(4) Revenue Form 40A201, "Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Report", shall be used by a pass-through entity doing business in Kentucky to report Kentucky income tax withheld on each nonresident individual member whose net distributive share income is at least $1,000.

(5) Revenue Form 40A201, "740-HC-1, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report", shall be used by a pass-through entity doing business in Kentucky to report and pay Kentucky income tax withheld on nonresident individual members.

(6) Revenue Form 40A272, "Kentucky Income Tax Forms Requisition" shall be used to order income tax forms.
(9) (69) Revenue Form 42A680, "Kentucky Individual Income Tax Return Audit Report" shall be used by the Department of Revenue to advise an individual of an adjustment to income tax credits on an individual income tax return which may result in an underpayment or overpayment.

(9) (69) Revenue Form 42A701B, "Kentucky Individual Income Tax Return Audit Report" shall be issued by the Department of Revenue to advise an individual of an adjustment to income tax credits and credits on an individual income tax return which may result in an underpayment or overpayment.

(10) (69) Revenue Form 42A705, "Kentucky Income Tax Withholding Audit Report" shall be used by the Department of Revenue to explain an adjustment to withholding tax reported and to the withholding tax liability.

(11) (490) Revenue Form 42A740, "2005 [2004] Kentucky Individual Income Tax Return Full-Year Residents Only" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003, and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.

(12) (444) Revenue Form 42A740-EZ, "2005 [2004] Kentucky Individual Income Tax Return for Single Persons and No Dependents" shall be completed by resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003, and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.


(14) (443) Revenue Form 42A740-L, "2000 Kentucky Income Tax Postcard" shall be used to mail labels and information to resident individuals.


(16) (446) Revenue Form 42A740-NP [42A740-S9], "2005 [2004] Kentucky Income Tax Return, Nonresident or Part Year Resident" shall be completed by non-resident or part-year resident individuals to report taxable income and income tax liability for taxable years beginning after December 31, 2003, and shall be filed within three and one-half (3 1/2) months after the closer of the taxable year.


(20) (446) Revenue Form 42A740-S10, "2005 [2004] Kentucky Income Tax Return, Nonresident or Part-Year Resident forms and instructions" packet shall be mailed to nonresident and part-year resident individuals for use in determining taxable income and income tax liability for 2005 [2004].


(22) (449) Revenue Form 42A740-ES, "2005 [2006] Individual Income Tax Kentucky Electronic Tax Voucher" shall be submitted to Department of Revenue by individuals with payment of quarterly estimated tax.

(23) (499) Revenue Form 42A740-S1, "2210-K, 2005 [2004] Underpayment of Estimated Tax by Individuals" shall be filed by individuals to request a waiver of estimated tax penalty or to compute and self assess an estimated tax penalty for 2005 [2004].

(24) (639) Revenue Form 42A740-S4, "2005 [2006] Instructions for Filing Estimated Tax Vouchers" shall be used to compute the amount of estimated tax owed for 2005 [2006].

(25) (449) Revenue Form 42A740-T, "2004 Kentucky Individual Income Tax Return, TeleFile Tax Record and Instructions" shall be completed by resident individuals who choose to file their individual income tax return by telephone.


(27) Revenue Form 42A471, "2005 Kentucky Individual Income Tax Return for Tax Year 2002, 2003, 2004" shall be completed by individuals and filed with the Department of Revenue to amend a previously filed return.


(30) (636) Revenue Form 42A740-TC, "Schedule TC, 2004 Tax Computation Schedule" shall be completed by individuals and attached to Form 740 to compute the amount of allowable tax claimed, the hiring of an unemployed person, purchasing (installing) recycling or composting equipment, and to compute tax liability using the (5) or ten (10) year averaging for 2004.

(31) (636) Revenue Form 42A740-UTC, "Schedule UTC, Unemployment Tax Credit" shall be completed by individuals and attached to Form 740, or Form 740-NC to provide Department for Employment Services with the appropriate numbers in support of credit claimed for hiring an unemployed person(s).


(33) Revenue Form 42A740-KNOL, "Schedule KNOL, 2005 Kentucky Net Operating Loss Schedule" shall be used by individuals to compute and carry forward a net operating loss to subsequent years.

(34) (636) Revenue Form 42A740-S20, "1045-K, 2004 Kentucky Net Operating Loss Application for Income Tax Refund" shall be used by individuals to compute and carry back a net operating loss refund.

(35) (636) Revenue Form 42A740-S20, "Instructions - Form 1045-K" shall be provided to individuals to explain the purpose of Form 1045-K and provide line by line instructions on how to complete the form.

(36) (636) Revenue Form 42A740-S21, "4972-K, 2005 [2004] Kentucky Tax on Lump-Sum Distributions" shall be completed by individuals to compute tax liability on lump sum distributions and attached to their income tax return.

(37) (636) Revenue Form 42A740-S22, "8453-K, 2005 [2004] Kentucky Individual Income Tax Declaration for Electronic Filing" shall be completed, signed by individual taxpayer(s) and submitted to Department of Revenue in support of an electronically filed return.

(38) (636) Revenue Form 42A740-S23, "740-V, 2005 [2004] Kentucky Electronic Payment Voucher" shall be used by individual taxpayers and submitted to the Department of Revenue with payment of additional tax due on an electronically filed return.

(39) Revenue Form 42A740-S24, "8883-K, 2005 Kentucky Education Tuition Tax Credit" shall be used by individual taxpayers and submitted to the Department of Revenue to claim tuition tax credit on individual income tax return.

(40) (636) Revenue Form 42A741, "Form 741, 2005 [2004] Kentucky Fiduciary Income Tax Return" shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the taxable year by the fiduciary.
of an estate or trust to report income and tax liability of the estate or trust.

(41) [629] Revenue Form 42A741(I), "Instructions - Form 741, 2005 [2004] Kentucky Fiduciary Income Tax Return" is an instruction guide provided by the Department of Revenue for completing the 2005 [2004] Form 741.

(42) [629] Revenue Form 42A741-D, "Schedule D, Form 741, 2005 [2004] Kentucky Capital Gains and Losses" shall be completed and attached to Form 741 by a fiduciary to report income from capital gains and losses.

(43) [629] Revenue Form 42A741-K(1), "Schedule K-1 Form 741, 2005 [2004] Kentucky Beneficiary’s Share of Income, Deduction, Credits, etc." shall be filed by the fiduciary with Form 741 to report each beneficiary’s share of income, deductions, credits.

(44) [629] Revenue Form 42A765-[GP], "Form 765-[GP], 2005 [2004] Kentucky General Partnership Income Return" shall be completed and filed with the Department of Revenue within three (3) months and fifteen (15) days after the close of the tax year by a general partner to report income, deductions and credits of a general partnership for 2005 [2004].

(45) [629] Revenue Form 42A765-GP(1) 42A765(1), "Instructions - Form 765-[GP], 2005 [2004] Kentucky General Partnership Income Return" shall be provided to assist the general partner in completing a general partnership return.

(46) [629] Revenue Form 765-[GP], "Kentucky Schedule K-1 Form 765-[GP], 2005 [2004] Partner’s Share of Income, Credits, Deductions, etc." shall be filed by the general partnership with Form 765-[GP] to report each general partner’s share of income, credits, deductions, etc.

(47) [629] Revenue Form 42A765-S1, "2005 [2004] Kentucky Schedule K for General Partnerships with Economic Development Projects(*), shall be used by general partnerships which have one (1) or more economic development projects to determine total general partner or partners share of income, credits, deductions, etc., excluding the amount of each item of income, credit, deduction, etc., attributable to the projects. Instructions shall be included on the back of the form.

(48) Revenue Form 765-[GP] Instructions, "2005 Kentucky General Partnership Income Return Forms and Instructions" shall be used by general partnerships filing a Kentucky general partnership income return.

(49) [629] Revenue Form 42A800, "Withholding Kentucky Income Tax Instructions for Employers and Withholding Tax Tables* shall be used by employers to determine the amount of Kentucky tax to withhold from wages.

(50) [629] Revenue Form 42A801, "Form K-1, Kentucky Employer’s Return and Worksheet of Income Tax Withheld" shall be used by employers to report wages and taxes withheld for the filing period.

(51) [629] Revenue Form 42A801-D, "Form K-1, Amended Kentucky Employer’s Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period.

(52) [629] Revenue Form 42A801-E, "Form K-1E, Kentucky Employer’s Return and Worksheet of Income Tax Withheld - Electronic Funds Transfer* shall be used by employers who remit taxes withheld electronically to report wages and tax withheld for the filing period.


(54) [629] Revenue Form 42A803, "Form K-3, Kentucky Employer’s Return and Worksheet of Income Tax Withheld" shall be used by employers to report wages and tax withheld for the filing period and annually reconcile wages and taxes reported.

(55) [629] Revenue Form 42A803-D, "Form K-3, Amended Kentucky Employer’s Return of Income Tax Withheld", shall be used by employers to correct wages and taxes reported for the filing period and annually reconcile wages and taxes reported.

(56) [629] Revenue Form 42A803-E, "Form K-3E, Kentucky Employer’s Income Tax Withheld Return and Worksheet - Electronic Funds Transfer* shall be used by employers to report wages and tax withheld for the filing period and to annually reconcile wages and taxes reported.
beneficiary of a resident estate to prepare the appropriate inheritance and estate tax return.

(5) Revenue Form 92A120S, "Inheritance and Estate Tax Short Form Packet" shall be used by the personal representative or beneficiary of a resident estate to establish the appropriate inheritance and estate tax due the Commonwealth.

(6) Revenue Form 92A120X, "Kentucky Spousal Inheritance Tax Return", shall be used by the personal representative or beneficiary of a resident estate to establish there is no inheritance and estate tax due the Commonwealth.

(7) Revenue Form 92A121, "Acceptance of Inheritance & Estate Tax Return", shall be sent by the inheritance and estate tax section to the personal representative or beneficiary of an estate to certify that all death taxes due the Commonwealth have been paid.

(8) Revenue Form 92A200, "Kentucky Inheritance and Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(9) Revenue Form 92A201, "Kentucky Inheritance and Estate Tax Return - No Tax Due", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish there is no inheritance and estate tax due the Commonwealth.

(10) Revenue Form 92A202, "Kentucky Estate Tax Return", shall be used by the personal representative or beneficiary of a resident or nonresident estate to establish the estate tax due the Commonwealth.

(11) Revenue Form 92A204, "Real Estate Valuation Information Sheet", shall be used by the personal representative or beneficiary of an estate to establish the taxable value of real estate for inheritance tax purposes.

(12) Revenue Form 92A205, "Kentucky Inheritance Tax Return (Simplified Format)" shall be used by the personal representative or beneficiary of a small or uncomplicated resident or nonresident estate to establish the inheritance and estate tax due the Commonwealth.

(13) Revenue Form 92A500, "Notice of Insurance Payment", shall be used by insurance companies to notify the Department of Revenue when proceeds of a life insurance policy are paid following a death.

(14) Revenue Form 92A926, "Notice of Benefits Paid by Employer/Insurance Company", shall be used by insurance companies to notify the Department of Revenue when proceeds of a life insurance policy are paid following a death.

(15) Revenue Form 92A928, "Election to Defer the Payment of Inheritance Tax through Installments", shall be used by the beneficiary or beneficiaries of an estate to defer the payment of inheritance tax through installments.

(16) Revenue Form 92A929, "Notice of Agricultural and Horticultural Inheritance Tax Lien", shall be used to request the county clerk place a lien on a particular piece of real estate due to the personal representative, on behalf of an estate, electing the use of agricultural or horticultural value.

(17) Revenue Form 92A930, "Certificate of Reassess of Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk release the five (5) year lien that guaranteed collection of tax if terms of agreement not met.

(18) Revenue Form 92A931, "Certificate of Partial Discharge of the Agricultural and Horticultural Inheritance Tax Lien", shall be used by the inheritance and estate tax section to request the county clerk do a partial release of the five (5) year lien that guaranteed collection of tax if terms of agreement not met.

(19) Revenue Form 92A932, "Receipt of Inheritance and Estate Taxes", is a receipt given to taxpayer when tax payment is received in the office.

(20) Revenue Form 92A936, "Election to Qualify Terminable Interest Property and/or Power of Appointment Property", shall be used by the personal representative or beneficiary to elect to qualify terminable interest property or power of appointment property if proper criteria exists.

(21) Revenue Form 92F001, "Blanket Lien Release", notice shall be used to access lock boxes without requiring written consent or presence of the Department of Revenue or local PVA official and provides a blanket lien release on all property owned by any decedent.

(22) Revenue Form 92F101, "A Guide to Kentucky Inheritance and Estate Taxes", shall be used by the general public for information purposes concerning Kentucky inheritance and estate tax.

Section 9. Insurance Tax - Required Forms. (1) Revenue Form 74A100, "Insurance Premiums Tax Return", shall be used by foreign life insurance companies, stock insurance companies other than life, and foreign mutual companies other than life to report liability for foreign life insurance tax, other than life insurance tax, fire insurance tax and retaliatory taxes and fees.

(2) Revenue Form 74A101, "Insurance Tax Return - Domestic Mutual, Domestic Mutual Fire, or Cooperative and Assessment Fire Insurance Companies", shall be used by domestic mutual, domestic mutual fire or cooperative and assessment fire insurance companies to report liability for premiums tax on amounts paid to authorized and unauthorized reinsurance companies.

(3) Revenue Form 74A105, "Unauthorized Insurance Tax Return", shall be used by insurers not authorized to conduct business in the Commonwealth of Kentucky by the Department of Insurance to report liability for insurance premiums tax.

(4) Revenue Form 74A106, "Insurance Premiums Tax Return - Captive Insurer", shall be completed by domestic and foreign insurance companies to report captive insurance tax.

(5) Revenue Form 74A110, "2006 [9906] Kentucky Estimated Insurance Premiums Tax Form", shall be used by insurance companies to remit estimated premiums tax payments.

(6) Revenue Form 74A116, "Tax Election for Domestic Life Insurance Companies", shall be used by domestic life insurance companies to make an irrevocable election to pay state capital and reserves tax, premiums tax, and the county and city capital and reserves tax or to pay state premiums tax and local government premiums tax.

(7) Revenue Form 74A117, "Monthly Insurance Surcharge Report - Domestic Mutual, Cooperative and Assessment Fire Insurers", shall be used by domestic mutual, cooperative and assessment fire insurers to report liability for insurance premium surcharge.

(8) Revenue Form 74A118, "Monthly Surcharge Report", shall be used by domestic, foreign and alien insurers, other than life and health insurers, to report liability for insurance premium surcharge.

Section 10. Legal Process - Required Forms. Revenue Form 75A200, "County Clerk's Monthly Report of Legal Process Tax Receipts", shall be used by the county clerks to report the county's liability for the legal process tax and spouse abuse shelter fund.

Section 11. Marijuana and Controlled Substance - Required Forms. (1) Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence Stamp", shall be used by the Kentucky Department of Revenue to provide persons ordering marijuana and controlled substance tax stamps with the appropriate instructions on affixing the stamps.

(2) Revenue Form 73A702, "Notice of Seizure and Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", shall be used by law enforcement officials to notify the Kentucky Department of Revenue and county clerk of the seizure of marijuana and other controlled substances.

(3) Revenue Form 73A703, "Marijuana or Controlled Substance Stamps Order Form", shall be used by taxpayers to order stamps for marijuana or controlled substances.

Section 12. Motor Fuels - Required Forms. (1) Revenue Form 72A004, "Motor Fuels Tax Watercraft Refund Bond", shall be used by an approved surety to establish surety obligation upon the payment to the Commonwealth of any refunds to which the public boat dock fund applicant was not entitled.

(2) Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", shall be used by a public boat dock to make application.

(3) Revenue Form 72A006, "Motor Fuel Tax Refund Application - Public Boat Dock", shall be used by public boat dock refund
applicant to make application for refund of liquid fuel tax on purchases of liquid fuel delivered directly to the fuel tanks attached to the watercraft and used exclusively in watercraft motors.

(4) Revenue Form 72A010, "Motor Fuel Tax Refund Permit Holder's Bond", shall be used by an approved surety to establish surety obligation upon the payment of all taxes, penalties, and fines for which designated refund applicant may become liable under 138.344 to 138.355.

(5) Revenue Form 72A011, "Petroleum Storage Tank Environmental Assurance Fee Monthly Report", shall be used by licensed gasoline or special fuels dealers to report and remit monthly petroleum storage tank environmental assurance fee amounts due.

(6) Revenue Form 72A052, "Kentucky Motor Fuels Tax Refund Permit", shall be used by the KRC to issue Kentucky Motor Fuels Tax Refund Permits.

(7) Revenue Form 72A053-A, "Application for Refund of Kentucky Motor Fuel Tax Paid on Nonhighway Motor Fuels", shall be used by Kentucky Motor Fuels Tax Refund Permit holders to apply for refund of Kentucky motor fuel tax paid on nonhighway motor fuels.

(8) Revenue Form 72A054-A, "Kentucky Motor Fuels Tax Refund Invoice", shall be used by licensed Kentucky gasoline or special fuels dealers to authorize purchases of nonhighway agricultural use or nonhighway special fuels for refund of Kentucky motor fuel tax paid.

(9) Revenue Form 72A065, "Aviation Gasoline Tax Refund Bond", shall be issued by an approved surety to establish surety obligation upon the payment of the Commonwealth of any refunds to which the aviation gasoline refund applicant was not entitled.

(10) Revenue Form 72A066, "Application for Refund of Kentucky Tax Paid on Gasoline Used in Operation of Aircraft", shall be used by aviation gasoline refund applicant to make application for refund of Kentucky tax paid on gasoline used in operation of aircraft.

(11) Revenue Form 72A067, "Application for Approval to Receive a Refund of Aviation Motor Fuels", shall be used by aviation gasoline tax refund applicants seeking approval to receive a refund of aviation gasoline tax.

(12) Revenue Form 72A071, "Motor Fuels Tax Refund Bond - City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs", shall be used by a surety company authorized to do business in Kentucky to establish surety obligation upon the payment to the Commonwealth of any refunds to which a city and suburban bus, nonprofit bus, senior citizen transportation or taxicab refund applicant was not entitled.

(13) Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation and Taxicab Companies", shall be used by refund applicants to make application for refund of Kentucky tax paid on fuel used in the operation of city and suburban bus companies, nonprofit bus companies, senior citizen transportation and taxicab companies.

(14) Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxicabs", shall be used by qualifying applicants to make application for approval to receive a refund of tax on motor fuels consumed by city and suburban buses, nonprofit buses, senior citizen transportation and taxicabs.

(15) Revenue Form 72A075, "Receipts of Unreported Alcohol or Other Additives", shall be used by licensed gasoline dealers to report receipt of unreported alcohol or other additives.


(17) (466) Revenue Form 72A078, "Statement of Claim for Accountable Loss of Motor Fuel", shall be used by licensed gasoline or special fuels dealers to make claim for accountable loss of motor fuel.

(18) (449) Revenue Form 72A080, "Report of Gasoline Received from Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report receipt of tax free gasoline from licensed Kentucky dealers on the gasoline dealer's monthly report.

(19) (449) Revenue Form 72A081, "Report of Gasoline Imported from Other States" shall be used by licensed gasoline dealers to report gasoline imported from other states, on the gasoline dealer's monthly report.

(20) (449) Revenue Form 72A081-P, "Purchaser's Report Gasoline Imported into Kentucky - Kentucky Tax Paid to Suppliers", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.

(21) (460) Revenue Form 72A081-S, "Supplier's Report Gasoline Imported into Kentucky - Kentucky Tax Paid by Supplier", shall be used by licensed gasoline dealers to report gasoline imported into Kentucky where the Kentucky tax was paid by the supplier, on the gasoline dealer's monthly report.

(22) (458) Revenue Form 72A082, "Report of Gasoline Imported", shall be used by licensed gasoline dealers to report gasoline imported, on the gasoline dealer's monthly report.

(23) (460) Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", shall be used by licensed gasoline dealers to report gasoline received from terminal or refinery, on the licensed gasoline dealer's monthly report.

(24) (458) Revenue Form 72A084, "Report of Gasoline Exported", shall be used by licensed gasoline dealers to report gasoline exported, on the gasoline dealer's monthly report.

(25) (464) Revenue Form 72A085, "Report of Gasoline Sold to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report gasoline sold to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(26) (465) Revenue Form 72A086, "Report of Gasoline Withdrawals from Terminal Storage", shall be used by licensed gasoline dealers to report gasoline withdrawals from terminal storage, on the gasoline dealer's monthly report.

(27) (460) Revenue Form 72A087, "Report of Gasoline Withdrawals to Licensed Kentucky Dealers", shall be used by licensed gasoline dealers to report withdrawals of gasoline to licensed Kentucky dealers, on the gasoline dealer's monthly report.

(28) (464) Revenue Form 72A088, "Report of Gasoline Withdrawals Exported or Sold for Export", shall be used by licensed gasoline dealers to report withdrawals of gasoline exported or sold for export, on the gasoline dealer's monthly report.

(29) (468) Revenue Form 72A089, "Licensed Gasoline Dealers Monthly Report", shall be used by licensed gasoline dealers to report and remit monthly gasoline tax.

(30) (469) Revenue Form 72A090, "Gasoline Dealers Monthly Terminal Storage Report", shall be used by licensed gasoline dealers to report monthly terminal storage activity, on the gasoline dealer's monthly report.

(31) (460) Revenue Form 72A091, "Gasoline Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by gasoline dealers to claim a credit for gasoline sold for agricultural purposes to holders of Kentucky motor fuels tax refund permits.


(33) (465) Revenue Form 72A103, "Licensed Gasoline Dealer's Estimated Tax Payment", shall be used by licensed gasoline dealers to report and remit estimated gasoline tax monthly payments.

(34) (465) Revenue Form 72A107, "Licensed Special Fuels Dealer's Monthly Report of Special Fuels Sales to U.S. Government", shall be used by licensed special fuels dealers to report special fuels sales to U.S. government, on the special fuels dealer's monthly report.

(35) (464) Revenue Form 72A110, "Certification of Special Fuels Nonhighway Use", shall be used by qualifying entities to certify the nonhighway use of special fuels. The certification shall be maintained by the licensed special fuels dealer.

(36) (465) Revenue Form 72A112, "Report of Kerosene Received and Blended", shall be used by licensed special fuels dealers to report kerosene received and blended, on the licensed special fuels dealer's monthly report.

(37) (465) Revenue form 72A127, Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government
Agency Credit*, shall be used by a licensed special fuels dealer to list sales of special fuels to state or local government agencies for nonhighway special fuels use for a specific monthly period.

(38) [631] Revenue form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to nonprofit religious, charitable or education organizations for nonhighway special fuels use for a specific monthly period.

(39) [635] Revenue form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit (Unleaded Diesel)", shall be used by licensed special fuels dealers to report special fuels sold for commercial off-road use to holders of Kentucky Motor fuels tax refund permits who issued to the dealer a Certification of Special Fuels Nonhighway Use, Form 72A110.

(40) [639] Revenue form 72A131, "Special Fuels Dealer's Schedule of Sales Qualifying for Agricultural Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to motor fuels tax refund permit holders for agricultural special fuels use for a specific monthly period.

(41) [649] Revenue form 72A132, "Special Fuels Dealer's Schedule of Sales Qualifying for Residential Heating Tax Credit", shall be used by a licensed special fuels dealer to list sales of special fuels to consumers for heating a personal residence for a specific monthly period.

(42) [647] Revenue form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", shall be used by a person desiring a refund for a refund of motor fuel excise tax paid for nonhighway use.

(43) [649] Revenue form 72A138, "Licensed Special Fuels Dealer's Monthly Report", shall be used by a licensed special fuels dealer to report the total special fuels gallons received and distributed for a specific monthly period.

(44) [648] Revenue form 72A153, "Report of Special Fuels Received from Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list every special fuels shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.

(45) [644] Revenue form 72A154, "Report of Special Fuels Imported from Other States", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other states on which the Kentucky special fuels excise tax was not precollected by the supplier for a specific monthly period.

(46) [645] Revenue form 72A154-P, "Purchaser's Report Special Fuels Imported-Kentucky Tax Paid to Supplier", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was paid to the supplier for a specific monthly period.

(47) [645] Revenue form 72A154-S, "Supplier's Report Special Fuels Imported-Kentucky Tax Paid by Supplier", shall be used by a licensed special fuels dealer to list every special fuels shipment imported into Kentucky from other state terminals on which the Kentucky special fuels excise tax was charged to the dealer's customer for a specific monthly period.

(48) [643] Revenue form 72A155, "Report of Special Fuels Exported or Sold for Export", shall be used by a licensed special fuels dealer to list every shipment exported to another state for a specific monthly period.

(49) [648] Revenue form 72A156, "Report of Special Fuels Sold to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to other licensed special fuels dealers for a specific monthly period.

(50) [649] Revenue form 72A159, "Report of Special Fuels Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by a licensed special fuels dealer to report all special fuels shipments sold to a valid Motor Fuels Tax Refund Permit holder for exclusive use by railroad companies for nonhighway purposes for a specific monthly period.

(51) [660] Revenue form 72A160, "Licensed Special Fuels Dealer's Estimated Tax Payment", shall be used by a licensed special fuels dealer to report the special fuels tax liability for a specific monthly period and calculate ninety-five (95) percent of the applicable tax due for remittance by the due date.

(52) [641] Revenue form 72A161, "Monthly Report Liquified Petroleum Gas Dealer", shall be used by a licensed liquified petroleum gas dealer to report all gallons of liquified petroleum gas dispensed into the fuel tanks of licensed motor vehicles for a specific monthly period.

(53) [663] Revenue form 72A162, "Report of Liquified Petroleum Gas Motor Fuels", shall be used by a licensed liquified petroleum gas dealer to list every shipment of liquified petroleum gas placed into the fuel tank of a licensed motor vehicle for a specific monthly period.

(54) [669] Revenue form 72A163, "Application for Liquified Petroleum Gas Motor Fuels Tax Exemption Permit", shall be used by any entity desiring to obtain an exemption from the motor fuels excise tax on liquified petroleum gas to provide data regarding its carburetion system to insure compliance with the standards established by the Natural Resources and Environmental Protection Cabinet.

(55) [668] Revenue form 72A170, "Special Fuels Dealer's Monthly Terminal Storage Report", shall be used by a licensed special fuels dealer to summarize all Kentucky terminal receipt and disbursement activity for a specific monthly period.

(56) [665] Revenue form 72A171, "Report of Special Fuels Imported", shall be used by a licensed special fuels dealer to list all shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(57) [663] Revenue form 72A172, "Report of Special Fuels Received from Terminal or Refinery", shall be used by a licensed special fuels dealer to list all shipments received from other Kentucky terminals and placed into Kentucky terminal storage for a specific monthly period.

(58) [667] Revenue form 72A173, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", shall be used by a licensed special fuels dealer to list all shipments withdrawn to other licensed special fuels dealers for a specific monthly period.

(59) [668] Revenue form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", shall be used by a licensed special fuels dealer to provide a list of every shipment withdrawn from terminal storage and exported to another state for a specific monthly period.

(60) [666] Revenue form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", shall be used by a licensed special fuels dealer to provide total gallon withdrawals from his terminal storage facility or facilities for a specific monthly period.

(61) [666] Revenue form 72A200, "Special Fuels Dealer's Schedule of Dyed Diesel Credits and Tax Due", shall be used by licensed special fuels dealers to report the total dyed diesel gallons received and distributed to each special monthly period.

(62) [661] Revenue form 72A210, "Report of Dyed Diesel Received from Licensed Kentucky Dealers", shall be used by licensed special fuels dealer to list every dyed diesel shipment originating in Kentucky from another licensed special fuels dealer for a specific monthly period.

(63) [663] Revenue form 72A211, "Report of Dyed Diesel Imported from Other States", shall be used by a licensed special fuels dealer to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(64) [661] Revenue form 72A215, "Report of Kerosene and Other Receipts Received and/or Blended with Dyed Diesel", shall be used by licensed special fuels dealers to report kerosene and any other receipts received and/or blended with dyed diesel.

(65) [664] Revenue form 72A220, "Dyed Diesel Monthly Terminal Storage Report", shall be used by licensed special fuels dealers to summarize all dyed diesel Kentucky terminal receipts and disbursements activity for a specific monthly period.

(66) [662] Revenue form 72A221, "Report of Dyed Diesel Imported", shall be used by licensed special fuels dealers to list all dyed diesel shipments imported into Kentucky from other states and placed into Kentucky terminal storage for a specific monthly period.

(67) [666] Revenue form 72A222, "Report of Dyed Diesel Received from Terminal or Refinery", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel
received from a terminal or refinery located in Kentucky into terminal storage.
(68) [679] Revenue Form 72A223, "Report of Dyed Diesel Withdrawals to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage going to licensed Kentucky dealers.
(69) [688] Revenue Form 72A224, "Report of Dyed Diesel Withdrawals Exported or Sold for Export", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals either exported or sold for export from terminal storage.
(70) [689] Revenue Form 72A225, "Report of Dyed Diesel Withdrawals from Terminal Storage", shall be used by licensed special fuels dealers with terminal storage to report dyed diesel withdrawals from terminal storage.
(71) [690] Revenue Form 72A230, "Report of Dyed Diesel Exported or Sold for Export", shall be used by licensed special fuels dealers to report dyed diesel gallons exported or sold for export into another state.
(72) [694] Revenue Form 72A231, "Report of Dyed Diesel Sold to Licensed Kentucky Dealers", shall be used by licensed special fuels dealers to report dyed diesel sold to licensed Kentucky dealers.
(73) [696] Revenue Form 72A232, "Statement of Claim for Accountable Loss of Dyed Diesel", shall be used by licensed special fuels dealers to report approved accountable loss of dyed diesel gas.
(74) [723] Revenue Form 72A233, "Report of Dyed Diesel Sold for Exclusive Use by Railroad Companies for Nonhighway Purposes", shall be used by licensed special fuels dealers to report dyed diesel sold for exclusive use by railroad companies for nonhighway purposes.
(75) [687] Revenue Form 72A234, "Licensed Special Fuels Dealer's Monthly Report of Dyed Diesel Sales to U.S. Government" shall be used by licensed special fuels dealers to report dyed diesel sold to the U.S. government.
(76) [685] Revenue Form 72A240, "Special Fuels Dealer's Schedule of Dyed Diesel Sales Qualifying for Nonhighway Use Tax Credit", shall be used by licensed special fuels dealers to report dyed diesel sold for nonhighway use.
(77) [691] Revenue form 72A300, "Tax Registration Application for Motor Fuels License", shall be used by an applicant to register for a gasoline dealer's, special fuels dealer's, liquefied petroleum gas dealer's or motor fuel transporter's license.
(78) [733] Revenue Form 72A301, "Motor Fuels License Bond", shall be executed by a corporation authorized to transact surety business in Kentucky on behalf of a licensee to insure payment of taxes, penalties, and interest for which a dealer or transporter may become liable.
(79) [692] Revenue Form 72A302, "Motor Fuels License", shall be used by the Department of Revenue to issue a license to the qualified applicant in gasoline, special fuels, motor fuels transporter, or liquefied petroleum gas dealer.
(80) [693] Revenue Form 72A303, "Election Application/Cancellation Form", shall be used by gasoline and special fuels dealers to elect to pledge a financial instrument other than a corporate surety bond.

Section 13. Motor Vehicle Usage Tax - Required Forms. (1) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", shall be presented to the county clerk to establish taxable value upon the first registration or transfer of a motor vehicle for motor vehicle usage tax purposes.
(2) Revenue Form 71A101, "Motor Vehicle Usage Tax Multipurpose Form", shall be presented to the county clerk by a vehicle owner to:
(a) Claim one (1) of several exemptions;
(b) Establish "retail price" if prescribed by the department; or
(c) Establish "retail price" of new vehicles with equipment or adaptive devices added to facilitate or accommodate handicapped persons.
(3) Revenue Form 71A102, "Questionnaire", shall be completed by selected motor vehicle buyers and sellers providing specific information regarding a vehicle transaction.
(4) Revenue Form 71A103, "Application for Protective Refund of Motor Vehicle Usage Tax Used Vehicles Purchased Out of State" shall be completed in order to submit a claim for trade-in credit or a used motor vehicle purchased outside Kentucky.
(5) Revenue Form 71A151, "Enterprise Zone Motor Vehicle Usage Tax Exemption Certification" shall be presented to the county clerk by a certified resident of an enterprise zone to claim exemption from the motor vehicle usage tax upon the first registration or transfer of a motor vehicle.
(6) Revenue Form 71A163, "Affidavits to Support Interstate Motor Carrier Motor Vehicle Usage Tax Exemption", shall:
(a) Be used by the nonresident owner of a motor vehicle which is:
1. Based in a state other than Kentucky; and
2. Required to be registered in Kentucky pursuant to KRS 186.145; and
(b) State that the vehicle:
1. Will be used primarily in interstate commerce; and
2. Pursuant to KRS 138.470(5), is exempt from the motor vehicle usage tax.
(7) Revenue Form 71A174, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Weekly Report", shall be submitted to the Department of Revenue by a county clerk as a recapitulation form to list all motor vehicle usage tax receipts, adjusted for corrections and commissions for a given week.
(8) Revenue Form 71A174-A, "County Clerk's Recapitulation of Motor Vehicle Usage Tax - Summary Report", shall be submitted to the Department of Revenue by a county clerk to report motor vehicle usage tax collections if an extension of time to file the computer generated weekly recapitulation report is requested.
(9) Revenue Form 72A007, "Affidavit of Nonhighway Use", shall be used by taxpayers attesting that a motor vehicle will not be operated upon Kentucky's public highways.
(10) Revenue Form 73A054, "Kentucky Application For Dealer Loans/Rental Vehicle Tax", shall be used by motor vehicle dealers to register to participate in the Loaner/Rental Vehicle Tax program.
(11) Revenue Form 73A055, "Monthly Report For Dealer Loaner/Rental Vehicle Tax", shall be used by motor vehicle dealers to report tax due on vehicles dedicated for use in the Loaner/Rental Vehicle Tax program.

Section 14. Property Tax - Required Forms. (1) Revenue Form 61A200, "Public Service Company Property Tax Return and Instructions", shall be filed by public service companies with the Department of Revenue reporting company name, location and other pertinent filing information.
(2) Revenue Form 61A200(A), "Report of Total Unit System and Kentucky Operations", shall be filed by public service companies with the Department of Revenue, reporting the System and Kentucky original cost, total depreciation and depreciated cost for all operating and non-operating property types as of the end of the taxable year.
(3) Revenue Form 61A200(B), "Report of Kentucky Vehicles, Car Lines and Watercraft", shall be filed by public service companies with the Department of Revenue. Reporting the assessed value of all Kentucky appportioned and regular licensed motor vehicles, railroad cars and commercial watercraft as of the end of the year.
(4) Revenue Form 61A200(C), "Report of Total Unit Operations Balance Sheet", shall be filed in public service companies with the Department of Revenue, reporting a financial statement (balance sheet) as of December 31 for the system operating unit including Kentucky.
(5) Revenue Form 61A200(D), "Report of Total Unit Operations Income Statement", shall be filed in public service companies with the Department of Revenue. Reporting a financial statement (income statement) for 12 months ending December 31 for the system operating unit including Kentucky.
(6) Revenue Form 61A200(E), "Filing Extension Application", shall be used by public service companies to request an extension
of time to file the public service company tax return.  

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

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

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

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

(11) (73) Revenue Form 61A200(K), "Operating Property Listing by Taxing Jurisdiction/Operating and Nonoperating Property [and Business-Factors]

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

(13) (99) Revenue Form 61A200(M), "Report of Allocation Factors/Operating and Noncarrier Property [and Business-Factors]

(14) (40) Revenue Form 61A200(N), "Report of Operating and Business Factors for Interstate Railroad and Sleeping Car Companies", shall be filed by interstate, noncarrier, public service companies with the Department of Revenue, reporting property and business factors in total and for the state of Kentucky.

(15) (41) Revenue Form 61A200(O), "Report of Leased Real Property/Kentucky Operating Leases, Personal Property, and System Report of Leased Property", shall be filed by public service companies with the Department of Revenue, reporting all leased property and the terms of the lease.

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

(17) (43) Revenue Form 61A200(Q), "Report of Cable Television", shall be filed by public service companies with the Department of Revenue, reporting their Kentucky property investment.

(18) (44) Revenue Form 61A200(R), "Supplemental Report of Operations for Contained and Residential Linfield", shall be filed by landfills with the Department of Revenue, reporting historic, current and future operational information.

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

(20) (46) Revenue Form 61A200(T), "Filing Requirements for Commercial Passenger and Cargo Airlines", shall be filed by passenger and cargo airline companies with the Department of Revenue, reporting statistical information about all owned and leased aircraft.

(21) Revenue Form 61A200(U), "Report of Recliner-Leasing Forms", shall be filed by cable television and telephone companies leasing equipment to or from other providers, with the Department of Revenue, reporting company name and address.

(22) Revenue Form 61A200(V), "Industria\n
revenue bond.

(23) Revenue Form 61A200(W), "Wireless Telephone Provider Report", shall be filed by wireless telephone providers operating in Kentucky to report spectrum data for those companies operating wholly or partially in Kentucky.

(24) Revenue Form 61A202, "2006 Public Service Company Property Tax Return for Railroad Car Line", shall be filed by railroad car line companies with the Department of Revenue, classifying the railcars by type and reporting cost, age and mileage for each railcar.

(25) Revenue Form 61A203, "2006 Apportioned Vehicle Property Tax Return and Instructions", shall be completed by motor vehicle carriers engaged in interstate commerce and operating wholly or partially in Kentucky to report motor vehicle tax liabilities.

(26) Revenue Form 61A207, "2006 Nonresident Watercraft Property Tax Return", shall be filed by nonresident watercraft owners which do not fall under the filing requirements of KRS 136.120, with the Department of Revenue, reporting the watercraft's book value, original cost and total and Kentucky mileage.

(27) Revenue Form 61A207, "Instructions - 61A207", shall be available to assist taxpayers who are required to file revenue form 61A207.

(28) Revenue Form 61A208, "2006 Public Service Company Property Tax Return Coin Operated Telephones", shall be filed by owners of coin-operated telephones with the Department of Revenue, reporting an activity summary and copies of the annual report to the parent company or holding company and the Department of Finance and Administration.

(29) Revenue Form 61A209, "Public Service Company Sales", shall be filed by public service companies with the Department of Revenue, reporting all full or partial sale or purchase of assets of the public service company to a taxpayer, which has sold or bought a public service company, with the Department of Revenue in order to assist in the determination of fair cash value for ad valorem tax purposes.

(30) Revenue Form 61A210, "Cable Television Company Sales", shall be filed by a taxpayer, which has sold or bought a cable television company, with the Department of Revenue in order to assist in the determination of fair cash value for ad valorem tax purposes.

(31) Revenue Form 61A211, "Public Service Company Schedule of Owned or Leased 2004 Motor Vehicles with Kentucky Situs as of January 1, 2006 assessment date", shall be filed by public service companies with the Department of Revenue reporting all motor vehicles owned or leased within Kentucky to assure proper credit for previously assessed motor vehicles.

(32) Revenue Form 61A211, "Instructions for Revenue Form 61A211", November, 2004, shall provide instructions for completing "Revenue Form 61A211, Public Service Company Schedule of Owned or Leased Motor Vehicles with Kentucky Situs".

(33) Revenue Form 61A230, "Notice of Assessment for Public Service Company", shall be sent by the Department of Revenue to the taxpayer notifying him of the final assessment of the public service company property.

(34) Revenue Form 61A240, "Notice of Assessment for Public Service Company", shall be sent by the Department of Revenue notifying him of a tentative assessment of the public service company property. This notice also informs the taxpayer of the protest period.

(35) Revenue Form 61A250, "Notice of Assessment for Public Service Company on the Taxpayer's Claim of Value", shall be sent by the Department of Revenue notifying the taxpayer of his claim of assessed value on public service company property.

(36) Revenue Form 61A255, "Public Service Company Property Tax Statement", shall be used by the counties, schools and special districts to bill public service companies for local property taxes.

(37) Revenue Form 61A500, "2006 Tangible Personal Property Tax Return and Instructions for Communication Service Providers and Multi-channel Video Program Service Providers", shall be filed by communication, satellite, and cable television companies with the Department of Revenue, reporting all tangible personal property.
tion, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky original cost, depreciation and net book value of each class of tangible personal property.

(34) Revenue Form 61A500(X), "Summary of Gross Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky Original Cost by taxing jurisdiction.

(35) Revenue Form 61A500(L), "Summary of Reported Personal Tangible Property Listing by Taxing District", shall be filed by telecommunication, satellite, and cable television companies with the Department of Revenue, summarizing the Kentucky reported value by taxing jurisdiction.

(36) [84] Revenue Form 61A507, "Nonresident Watercraft Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of nonresident watercraft personal property (e.g., houses, boats and special districts to bill for local property taxes).

(37) [84] Revenue Form 61A508, "Annual Report of Distilled Spirits in Bonded Warehouse", shall be filed by distilleries with the Department of Revenue to report inventory as of January 1.

(38) [86] Revenue Form 61A508-31, "Schedule 1 Department of Property Valuation Cost of Production Schedule", shall be filed by distilleries with the Department of Revenue, reporting the average cost per gallon of production.

(39) [86] Revenue Form 61A508-52, "Schedule 2 Department of Property Valuation Storage of Cost Schedule", shall be filed by distilleries with the Department of Revenue, reporting average per barrel of storage.

(40) [86] Revenue Form 61A508-53, "Schedule 3 Schedule of Bulk Sales", shall be filed by distilleries with the Department of Revenue, reporting the date of the sale or purchase, the number of barrels, age and the price.

(41) [86] Revenue Form 61A508-4, "Schedule 4", shall be filed by distilleries with the Department of Revenue, reporting the fair market value for case goods and other inventory recorded on form 61A508.

(42) Revenue Form 61A509, "Distilled Spirits or Telecommunication Property Tax Statement", shall be used by county clerks and local tax jurisdictions to bill assessments of distilled spirits and telecommunication personal property.

(43) [89] Revenue Form 62A006, "Motor Boat Tax and/or Registration Renewal Notice" shall be issued by the Department of Revenue to notify motor boat owners of their ad valorem property tax liabilities and registration renewal.

(44) [89] Revenue Form 62A007, "Motor Vehicle Tax and/or Registration Renewal Notice" shall be issued by the Department of Revenue to notify motor vehicle owners of their ad valorem property tax liabilities and registration renewal deadline.

(45) [92] Revenue Form 62A010, "Notice for Boat Transfer", shall be issued to January 1 owners of boats transferred during the calendar year informing them of the ad valorem tax due on the transferred boat.

(46) [92] Revenue Form 62A013, "Application for Assessment Moratorium Certificate", shall be filed by property owners seeking an assessment moratorium on qualifying existing property undergoing repair, rehabilitation or restoration. The form shall be filed with the proper administrating agency of the county in which the property is located, thirty (30) days prior to restoration or repair.

(47) [92] Revenue Form 62A015, "1999 Motor Vehicle and Watercraft Property Tax Rate Certification", shall be submitted annually to the Department of Revenue by motor vehicle and watercraft taxing jurisdictions to certify the rates established by the taxing jurisdiction for motor vehicles and watercraft.

(48) [92] Revenue Form 62A016, "Quota Statement" shall be issued by the Department of Revenue to certify that a county clerk is in good standing with regard to the conduct of ad valorem property tax collection duties.

(49) [92] Revenue Form 62A017, "County Clerk's Claim for Calculation of Motor Vehicle and Boat Bills" shall be completed by the Department of Revenue and county clerk to certify the total number of motor vehicle and boat accounts for a given county and determine the county clerk's compensation for making tax bills.

(50) [92] Revenue Form 62A018, "School Taxing Jurisdiction - Motor Vehicle and Watercraft Property Tax Rate" shall be completed by the Department of Revenue to list the motor vehicle and watercraft property tax rates for each school taxing jurisdiction.

(51) [92] Revenue Form 62A019, "Distributions of Ad Valorem Tax to the Fiscal Courts" shall be completed by the Department of Revenue to list the fiscal year ad valorem property tax distributions to the various county fiscal courts.

(52) [92] Revenue Form 62A020, "Intercounty Property Tax Collections", shall be completed by the Department of Revenue to list distributions of ad valorem property tax made to individual taxing jurisdictions.

(53) [92] Revenue Form 62A023, "Application for Exemption from Property Taxation" shall be filed by organizations, other than institutions of religion, seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Department of Revenue.

(54) [92] Revenue Form 62A023-R, "Application for Exemption from Property Taxation for Religious Organizations" shall be filed by institutions of religion seeking a property tax exemption under Section 170 of the Kentucky Constitution. This form shall be filed with the Department of Revenue.

(55) [92] Revenue Form 62A024, "Undeveloped Oil and Gas Property Tax Return", shall be filed by owners or lessees of undeveloped oil and gas property with the Department of Revenue, reporting property by county, including a map for each property location and lease information for leased property.

(56) [92] Revenue Form 62A030, "Request for Reproduction of PVA Public Records" shall be submitted to request copies of documents required to be retained by the PVA.

(57) [92] Revenue Form 62A037, "Mail Back Department of Property Valuation", shall be filed by property owners, other than the owners of mobile homes, to report information regarding their property to the Department of Revenue in order to ensure assessment quality.

(58) [92] Revenue Form 62A039, "Mail Back Department of Property Valuation for Mobile Manufactured Home", shall be filed by owners of mobile homes to report information regarding their property to the Department of Revenue in order to ensure assessment quality.

(59) [92] Revenue Form 62A044, "Affidavit for Correction/Exoneration of Motor Vehicle/Boat Property Tax", shall be completed by the owner of the vehicle, boat, or property and returned (to the PVA or to the registrar's office) in order to correct owner or vehicle/boat information in the ad valorem tax computer system. The PVA will present the form to the county clerk when a tax refund is authorized.

(60) [92] Revenue Form 62A050, "Application for Property Tax Refund", shall be filed by taxpayers seeking a refund of taxes.

(61) [92] Revenue Form 62A200, "Unmined Coal Property Tax Information Report", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting filer information.

(62) [92] Revenue Form 62A200A, "Schedule A Fee Property Ownership", shall be filed by owners or lessees of unmined minerals with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

(63) [92] Revenue Form 62A200B, "Schedule B Mineral Property Ownership (Coal Only)", shall be filed by owners or lessees of unmined coal with the Department of Revenue, reporting ownership information for each parcel or royalty information for each leased parcel.

(64) [92] Revenue Form 62A200C, "Schedule C Leased Property", shall be filed by all lessees and sublessees with the Department of Revenue, reporting a property schedule for each parcel leased from another party and outlined on the lessee map.

(65) [92] Revenue Form 62A200D, "Schedule D Property or Stock Transfers" shall be filed by both purchasers and sellers of
unmined mineral property, with the Department of Revenue, reporting details of the transaction.

(62) (641) Revenue Form 62A200E, "Schedule E Lease Terminations, Transfers and Assignments", shall be filed by lessors or lessees of unmined minerals, with the Department of Revenue, reporting the parcel number, date lease was terminated and the reason for termination.

(63) (661) Revenue Form 62A200F, "Schedule F Farm Exception to Unmined Mineral Tax", shall be filed by surface owners, who own the mineral rights in their entirety and are engaged primarily in farming, to be excepted from the unmined minerals tax.

(70) (661) Revenue Form 62A200G, "Schedule G Geological Information by County", shall be filed by owners or lessees of unmined minerals, with the Department of Revenue, reporting exploration and analytical information.

(71) (672) Revenue Form 62A302, "Request for Information for Local Board of Tax Appeals", (Property Information Request Regarding Assessment Appeals) shall be filed by taxpayers with the property valuation administrator, if appealing their assessment on real property.

(72) (687) Revenue Form 62A304, "Property Valuation Administrator's Recapitulation of Real Property Tax Roll" shall be filed by the property valuation administrator by the first Monday in April, showing a recapitulation of property assessments by type of property and by taxing district; also known as "first recap".

(73) (687) Revenue Form 62A306, "Property Valuation Administrator's Summary of Real Property Tax Roll Changes" shall be filed by the property valuation administrator within six (6) days of the conclusion of the real property tax roll inspection period, showing all changes made since the submission of Revenue Form 62A304; also known as "final recap" or "second recap".

(74) (700) Revenue Form 62A307, "Property Owner Conference Record", shall be used by the property valuation administrator to document a property owners appeal conference. The property owner or his representative shall be asked to sign the record and shall be given a copy of the record.

(75) (741) Revenue Form 62A310, "Summary of Bonds Held by Kentucky Residents", (Corporate Report of Securities Held by Kentucky Residents - Cover Letter), shall be filed with the Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(76) (742) Revenue Form 62A311, "Corporate Report of Bonds [Securities] Held by Kentucky Residents", shall be filed by Kentucky corporations with the Department of Revenue, reporting their taxable securities held by Kentucky residents.

(77) (743) Revenue Form 62A311-S1, "Life Insurance Proceeds Summary Report[Kentucky Property Tax - Cover Letter]", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(78) (744) Revenue Form 62A311-S2, "Kentucky Life Proceeds Report", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting those Kentucky residents entitled to proceeds of life insurance policies left on deposit with the insurance company and subject to withdrawal as of January 1.

(79) (760) Revenue Form 62A320, "Broker's Report of Margin or Cash Accounts of Kentucky Residents", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting margin or cash accounts of Kentucky residents.

(80) (760) Revenue Form 62A320-S1, "Kentucky Margin Accounts", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting the margin accounts of holders as of January 1.

(81) (777) Revenue Form 62A320-S2, "Kentucky Cash Accounts", shall be filed by brokers doing business in Kentucky, with the Department of Revenue, reporting the cash accounts of holders as of January 1.

(82) (785) Revenue Form 62A323, "Record of Additions and Deletions shall be used by the PVA to report all real property additions and deletions for a particular assessment year.

(83) (788) Revenue Form 62A329, "Annual Report of Domestic Life Insurance Companies", shall be filed by life insurance companies doing business in Kentucky, with the Department of Revenue, reporting the fair cash value of the company's intangible property, both taxable and exempt, and the aggregate amount.

(84) (796) Revenue Form 62A350, "Application for Exemption Under the Homestead/Disability Amendment", shall be filed by property owners seeking an exemption from property taxes under Section 170 of the Kentucky Constitution. This application shall be filed with the property valuation administrator of the county in which the residential unit is located.

(85) (810) Revenue Form 62A352, "Notice to Real Property Owner of Assessment by Property Valuation Administrator", shall be mailed to the property owner by the property valuation administrator notifying him of the assessment amount and of his appeal rights.

(86) (814) Revenue Form 62A353, "Notice of Listing of Omitted Real Property", shall be mailed by the property valuation administrator to the property owner. This document shall notify the property owner that his omitted property has been listed and assessed and of his appeal rights.

(87) (820) Revenue Form 62A354, "Notice to Property Owner of Final Decision of Board of Assessment Appeals", shall be sent from the Board of Assessment Appeals to the property owner to inform them of their ruling.

(88) (831) Revenue Form 62A363-B, "County Clerk's Claim for Preparing Omitted Tax Bills", shall be submitted by the county clerk in order to receive payment of one (1) dollar for each omitted property tax bill prepared, with the claim to be paid from the county treasury and one-half (1/2) percent out of the State Treasury.

(89) (840) Revenue Form 62A364, "Nonresident Affidavit", shall be filed as proof of nonresidency in Kentucky as of January 1, for ad valorem tax purposes.

(90) (851) Revenue Form 62A366, "Order Correcting Erroneous Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in an assessment of property.

(91) (861) Revenue Form 62A366-D, "Order Correcting Erroneous Delinquent Assessment", shall be filed by the property valuation administrator with the sheriff, to correct an error made in a delinquent assessment of property.

(92) (878) Revenue Form 62A366-R, "Exoneration Form for Property Tax Refund", shall be filed by taxpayer for refunds of property tax.

(93) (881) Revenue Form 62A367, "Authorization for Preparing Additions/Supplemental Property Tax Bills" shall be used by property valuation administrator to prepare additions/supplemental tax bills.

(94) Revenue Form 62A367-A, "Instructions for Preparation of Additions/Supplemental Tax Bills and Official Receipt", are provided to assist the PVA with the preparation of additional/supplemental tax bills.

(95) (891) Revenue Form 62A368-A, "County Clerk's Monthly Report of Delinquent Tax Collections" shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for the 1997 tax year only.

(96) (891) Revenue Form 62A368-B, "County Clerk's Monthly Report of Delinquent Tax Collections" shall be used by county clerks to report monthly to the Department of Revenue delinquent property tax collections for tax years after 1997.

(97) (910) Revenue Form 62A376, "Intangible Property Tax Return", shall be filed by owners of taxable intangible property, with either the property valuation administrator in the county of taxable situs or the Department of Revenue, reporting all taxable intangible at fair cash value as of January 1 of the year of the return.

(98) (923) Revenue Form 62A376-I, "Intangibles Intangible Property Tax Return", shall be available to taxpayers who are required to file 62A376.

(99) (931) Revenue Form 62A378, "Report of Location of Mobile Homes", shall be filed by every person providing rental space for mobile homes and house trailers. This form shall be filed with the property valuation administrator of the county in which the park is located.

(100) (944) Revenue Form 62A379, "Listing of Omitted Real Property", shall be used by a taxpayer to voluntarily list any property previously omitted from the tax roll or shall be used by property
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valuation administrator to list any involuntary omitted property.

(101) Revenue Form 62A384, "Oil Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed oil property in Kentucky, reporting the lease, purchaser and operator's name, as well as production information.

(102) Revenue Form 62A384-C, "Clay Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing clay property, reporting owner's name and address, percent ownership, product tons and royalty rate.


(104) Revenue Form 62A384-F, "Fluorspar [Fluorspar] Property Tax Return", shall be filed with the Department of Revenue by persons owning fluorspar [fluorspar] property, reporting percent ownership, type of mineral owned, estimated tons of mineable reserves and estimated value of mineral reserves.

(105) Revenue Form 62A384-G, "Natural Gas Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing developed natural gas properties, reporting the location of the property, total yearly gas production, number of producing wells and the total dollar value of production.

(106) Revenue Form 62A384-L, "Limestone and Sand and Gravel Property Tax Return", shall be filed with the Department of Revenue by persons owning or leasing limestone, sand or gravel properties reporting mineral location, type of mining and production in the current year.

(107) Revenue Form 62A384-O, "Oil Property Tax Return Lease Rate", shall be filed with the Department of Revenue by all persons, corporations, businesses and partnerships owning, leasing or having knowledge of developed oil properties to report developed oil property in Kentucky.

(108) Revenue Form 62A385-A, "Sheriff's Receipt For Unpaid And Partially Paid "Tax Bills", shall be used by incoming sheriffs to give receipt to the outgoing sheriff for the unpaid and partially paid tax bills outstanding when he assumes office.

(109) Revenue Form 62A394, "Sheriff's Monthly Report of Property Tax Collections", shall be used by sheriffs to report to the Department of Revenue property tax collections for the month.

(110) Revenue Form 62A394-MV, "County Clerk's Monthly Report of Motor Vehicle Property Tax Collections" shall be submitted by the county clerk to the Department of Revenue and local taxing jurisdictions to report ad valorem property tax collections for the month.

(111) Revenue Form 62A398, "Property Valuation Administrator's Bond" shall be completed by Property Valuation Administrators evidencing surety with the Commonwealth and local school board(s) and affixing a commitment to fulfill the duties of the office.

(112) Revenue Form 62A399, "Notice To Appear in Circuit Court", shall be served to a person who is indebted to another person who has a delinquent tax liability.

(113) Revenue Form 62A400, "Notice of Distraint", shall be sent by the sheriff to notify persons in possession of personal property belonging to a delinquent taxpayer that this property is subject to distraint in order to settle the tax liability.

(114) Revenue Form 62A401, "Final Notice Before Distraint", shall be sent by the sheriff to the owner of real and personal property omitted from the tax roll.

(115) Revenue Form 62A405, "Notice of Sale of Tax Bill", shall be sent by the county attorney to the owner of real property to notify the owner that a certificate of delinquency has been issued against the property.

(116) Revenue Form 62A500, "2006" [2006] Tangible Personal Property Tax Return", shall be filed by owners or lessees of tangible personal property, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting taxpayer information, original cost of tangible personal property and reported value of tangible property.

(117) Revenue Form 62A500-A, "2006" [2006] Tangible Personal Property Tax Return (Aircraft Assessments Only)" [for Aeronautics] shall be filed by owners or lessees of aircraft not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting federal registration number, make and model, and taxpayer's value for each aircraft.

(118) Revenue Form 62A500-C, "Consigenee Tangible Personal Property Tax Return", shall be filed by persons in possession of consigned property who have not listed the property on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or the Department of Revenue, reporting consignor information and consigned inventory information.

(119) Revenue Form 62A500-L, "Lessee Tangible Personal Property Tax Return" shall be filed by lessees of tangible personal property who did not list the property on Revenue Form 62A500, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting lessor information and equipment information.

(120) Revenue Form 62A500-S1, "Dealer's Inventory Listing for Line 34 Tangible Personal Property Tax Return" shall be filed by automobile dealers, new boat and marine equipment held under a floor plan and new farm machinery held under a floor plan with the Property Valuation Administrator of each county or with the Department of Revenue, containing a detailed listing of property reported on line 34 of the Tangible Personal Property Tax Return.

(121) Revenue Form 62A500-W, "2006" [2006] Tangible Personal Property Tax Return (Documented Watercraft) shall be filed by owners or lessees of documented vessels not used for commercial purposes, with either the property valuation administrator of the county of taxable situs or with the Department of Revenue, reporting the vessel's number, make and model and taxpayer's value for each watercraft.

(122) Revenue Form 62A600, "Domestic Savings and Loan Tax Return", shall be filed with the Department of Revenue by savings and loans operating solely in Kentucky, reporting the balances in their capital accounts.

(123) Revenue Form 62A601, "Foreign Savings and Loan Tax Return", shall be filed with the Department of Revenue by foreign savings and loans authorized to do business in this state, reporting the balances in their capital accounts.

(124) Revenue Form 62A601-S1, "Schedule A Appointment Factor", shall be filed with the Department of Revenue, by taxpayers filing revenue form 62A601, reporting the amount of Kentucky receipts, loans and payrolls.

(125) Revenue Form 62A601-S2, "Computation of Exempt Securities [Influence-Amusement] Schedule B", shall be filed with the Department of Revenue, by taxpayers filing revenue form 62A600 or 62A601, reporting the market value of U.S. government securities.

(126) Revenue Form 62A850, "Bank Deposits Tax Return" shall be filed with the Department of Revenue by financial institutions, reporting the amount of its deposits as of the preceding January 1.

(127) Revenue Form 62A861, "Schedule 1 Summary of Deposits" shall be filed with the Department of Revenue, by taxpayers filing revenue form 62A860 or 62A861, listing deposits located in each county and city.

(128) Revenue Form 62A862, "Certification of Tax Rates for Bank Deposits Franchise Tax", shall be filed by the local taxing district with the Department of Revenue to notify us of the rate set on bank deposits.

(129) Revenue Form 62A863, "Financial Institutions Local Deposits Summary Report", shall be filed with the Department of Revenue, by financial institutions, reporting all deposits located within the state as of the preceding June 30, along with a copy of the most recent summary of deposits filed with the Federal Deposit Insurance Corporation.

(130) Revenue Form 62A863-A, "Schedule A, Summary of Deposits", shall be filed with the Department of Revenue, by financial institutions filing Revenue Form 62A863, to summarize deposits.

(131) Revenue Form 62A864, "Trust Questionnaire", shall be sent by the Department of Revenue to a taxable trust to request additional information for ad valorem tax purposes.

(132) Revenue Form 62A865, "Kentucky Intangible Property Tax - 1998 Margin Accounts" shall be sent by the depart-
ment to the brokers maintaining an office in Kentucky notifying them of their Intangible assessment.

(133) Revenue Form 62A872, "Intangible Property Assessment Notice for Prepayment of Estates", shall be sent by the Department of Revenue to the taxpayer notifying him of the assessed value of intangible property in the settlement of an estate.

(134) Revenue Form 62A878, "Tangible Busines Situs for Kentucky Intangible Tax Purposes", shall be filed by Intangible property owners with the Department of Revenue in order to determine if the property has a Kentucky taxable business situs.

(135) Revenue Form 62A876-A, "Omitted Intangible Property List", shall be filed by the owner of Intangible property with the Department of Revenue in order to report for taxaton previously omitted property.

(136) Revenue Form 62A878B, "Omitted Intangible Worksheet", shall be used by the Department of Revenue to list and assess omitted Intangible property. This worksheet shall be sent to the property owner.

(137) Revenue Form 62A880, "Omitted Personal Property Assessment", shall be sent by the Department of Revenue to the owner of omitted personal property notifying him of the value assessed by the department as well as all applicable penalties and interest.

(138) Revenue Form 62B001, "Unmined Coal Tax Notice (Sublessee)", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

(139) Revenue Form 62B002, "Unmined Coal Tax Notice (Lease)", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

(140) Revenue Form 62B003, "Unmined Coal Tax Notice (Owner)", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in unmined coal property.

(141) Revenue Form 62B010, "Omitted Notice of Assessment on Unmined Coal", shall be sent by the Department of Revenue notifying the taxpayer of the value of his interest in omitted unmined coal property.

(142) Revenue Form 62B011, "Limestone, Sand, or [and] Gravel Tax Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in limestone, sand or gravel property.

(143) Revenue Form 62B012, "Oil Assessment Notice", shall be sent by the Department of Revenue notifying the taxpayer of the value of his interest in oil property.

(144) Revenue Form 62B013, "Clay Property Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in clay property.

(145) Revenue Form 62B014, "Undeveloped Oil and Gas Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in undeveloped oil and gas property.

(146) Revenue Form 62B015, "Gas Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

(147) Revenue Form 62B016, "Fluor spar [Fluorspar] Property Assessment Notice", shall be sent by the Department of Revenue to the taxpayer notifying him of the value of his interest in gas property.

(148) Revenue Form 62B006, "Omitted Intangible Property Listing Request Letter", shall be sent by the Department of Revenue to the owner of intangible property in which the department has reason to believe has been omitted or undervalued on the tax rolls.

(149) Revenue Form 62F002, "Appeals Process for Personal Property Assessments", shall be informational brochure on the procedure to follow to appeal an assessment on personal property.

(150) Revenue Form 62F003, "Appeals Process for Real Property Assessments", shall be informational brochure on the procedure to follow to appeal an assessment on real property.

(151) Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", shall be used by the PVA to establish fees to be charged for the cost of reproduction, creation, or other acquisition of records.

(152) Revenue Form 62F020, "Deeds/Transfers and Property Taxes", shall be an informational brochure on Kentucky's property tax system, sales and transfers of property and the requirements for preparing a tax deed.

(153) Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", shall be filed with the county clerk by any taxpayer wishing to appeal his assessment on real property.

(154) Revenue Form 62F1341, "Exemptions Allowed for Savings and Loans, Savings Banks and Similar Institutions for Intangible Property Tax Purposes", shall inform taxpayers subject to Intangible property tax on the value of their capital stock, of those institutions which issue obligations that are exempt from state ad valorem taxation.

Section 15. Racing Taxes - Required Forms. Revenue Form 75A100, "Race Track pari-Mutual and Admissions Report", shall be used by race tracks licensed by the Kentucky Racing Commission to report liability for the pari-mutual tax and to report admissions to the race track.

Section 16. Sales and Use Tax - Required Forms. (1) Revenue Form 51A101, "Sales and Use Tax Permit", shall be conspicuously displayed by the sales and use tax permit holder at the location for which the permit was issued.

(2) Revenue Form 51A102, "Kentucky Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for a particular reporting period.

(3) Revenue Form 51A102E, "Kentucky Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", shall be submitted to the Department of Revenue by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to Kentucky use tax and total amount of Kentucky sales and use tax due for particular reporting period.

(4) Revenue Form 51A103, "Kentucky Accelerated Sales and Use Tax Return and Worksheet", shall be completed by a Kentucky sales and use tax permit holder who has been designated as an accelerated filer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due.

(5) Revenue Form 51A103E, "Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", shall be submitted on a monthly basis by a Kentucky sales and use tax permit holder who remits payment via electronic funds transfer to report total receipts, itemized deductions, amount subject to use tax, and total amount of sales and use tax due on an accelerated basis and remitted via electronic funds transfer.

(6) Revenue Form 51A104, "Six (6) Percent Sales Tax Collection Bracket" shall be used by a Kentucky sales and use tax permit holder to compute the correct amount of sales and use tax due on the amount of sales.

(7) Revenue Form 51A105, "Resale Certificate", shall be presented to a seller by a Kentucky sales and use tax permit holder to claim that the tangible personal property purchased from the seller will be:

(a) Resold in the regular course of business;
(b) Leased or rented; or
(c) Used as raw material, industrial supply or industrial tool.

(8) Revenue Form 51A109, "Application for Energy Direct Pay Authorization" shall be filed with the Department of Revenue by a manufacturer, processor, miner or refiner to apply for an energy direct pay authorization.

(9) Revenue Form 51A110, "Direct Pay Authorization", shall be presented to a Kentucky sales and use tax permit holder by a company authorized to report and pay directly to the Department of Revenue the sales or use tax on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(10) Revenue Form 51A111, "Certificate of Exemption Machinery for New and Expanded Industry", shall be presented to a Kentucky sales and use tax permit holder by a manufacturer or pro-
duction processor to claim exemption from sales and use tax.

(11) Revenue Form 51A112, "Application for Direct Pay Authorization", shall be submitted by a registered sales and use tax permit holder wishing to obtain a direct pay authorization.

(12) Revenue Form 51A113, "Kentucky Consumer's Use Tax Return and Worksheet", shall be completed by a registered consumer's use tax permit holder and submitted to the Department of Revenue on a regular basis to report the amount of purchases subject to Kentucky use tax.

(13) Revenue Form 51A113(0), "Consumer's Use Tax Return - Nonregistered Filer" shall be completed by a person storing, using, or otherwise consuming tangible personal property in Kentucky who is not registered for a consumer's use tax permit number.

(14) Revenue Form 51A115, "Order for Selected Sales and Use Tax Publications", shall be presented to the Department of Revenue by anyone who wishes to order sales selected sales and use tax forms, regulations and informational circulars.

(15) Revenue Form 51A125, "Application for Purchase Exemption Sales and Use Tax", shall be presented to the Department of Revenue by a resident 501C(3) charitable, educational, or religious institution; historical sites; and units of federal, state or local government for a sales and use tax exemption on purchases of tangible personal property and certain services to be utilized in the exempt entity's function.

(16) Revenue Form 51A126, "Purchase Exemption Certificate", shall be presented to a retailer by a resident charitable, educational or religious institution or Kentucky historical site to claim exemption from sales and use tax on purchases of tangible personal property or services.

(17) Revenue Form 51A127, "Out-of-State Exemption Certificate", shall be presented to a retailer by an out-of-state agency or institution that has previously qualified for exemption in their state or residence and previously provided proof of such exemption to the Sales and Use Tax Section, Kentucky Department of Revenue to claim exemption from sales and use tax on its purchases of tangible personal property.

(18) Revenue Form 51A128, "Solid Waste Recycling Machinery Exemption Certificate" shall be presented to a retailer by a business or organization that claims exemption from sales and use tax on the purchase, lease or rental of machinery or equipment to be primarily used for recycling purposes to collect, source separate, compress, bale, shred or otherwise handle waste materials.

(19) Revenue Form 51A129, "Kentucky Sales and Use Tax Energy Exemption Annual Return", shall be submitted to the Department of Revenue by an energy direct pay holder to reconcile the actual amount of sales and use tax due on purchases of energy and energy-producing fuels to the total amount sales and use tax paid based upon previous estimates of tax due.

(20) Revenue Form 51A130, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", must be completed by aviation fuel dealers selling jet fuel in order to determine the sales and use tax collected on the sale of jet fuel.

(21) Revenue Form 51A131, "Kentucky Sales and Use Tax Monthly Aviation Fuel Dealer Supplementary Schedule", must be completed by aviation fuel dealers selling jet fuel in order to determine the sales and use tax collected on the sale of jet fuel.

(22) Revenue Form 51A132, "Kentucky Sales and Use Tax Equine Breeders Supplemental Schedule", shall be completed by an equine breeder to report taxable receipts from equine breeding fees.

(23) Revenue Form 51A143, "Purchase Exemption Certificate - Watercraft Ind", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of tangible personal property that will be used in the activity of transporting property or in conveying persons for hire.

(24) [86] Revenue Form 51A149, "Certificate of Exemption for Pollution Control Facilities", shall be presented to a retailer by a holder of a pollution control tax exemption certificate or jointly by a contractor and the holder of a pollution control tax exemption certificate to claim exemption from sales and use tax on the purchase of materials and equipment that will become part of a certified pollution control facility.

(25) [64] Revenue Form 51A150, "Airport Exemption Certifi- cate" shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of aircraft, repair and replacement parts for the aircraft, and supplies that will be used for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire.

(26) [55] Revenue Form 51A151, "Enterprise Zone Sales and Use Tax Exemption Certificate for Qualified Businesses Machinery and Equipment", shall be presented in duplicate to a retailer by an enterprise zone qualified business to claim exemption from sales and use tax on the purchase of machinery and equipment to be used in a designated enterprise zone.

(27) [56] Revenue Form 51A152, "Enterprise Zone Sales and Use Tax Exemption Certificate for Building Materials", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of building materials to be used in remodeling, rehabilitation, or new construction in an enterprise zone.

(28) [67] Revenue Form 51A153, "Certificate of Exemption for On-Farm Chicken or Livestock Raising Facilities", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of equipment, machinery, attachments, repair and replacement parts, and any materials incorporated into the construction, renovation, or repair of on-farm facilities used exclusively for raising poultry or livestock.

(29) [78] Revenue Form 51A154, "Certificate of Exemption Out-of-State Delivery for Aircraft, All Terrain Vehicle (ATV) Mobile/Manufactured Homes, Campers, Boats, Motors or Trailers", shall be completed in triplicate by the seller and buyer when the sale of the tangible personal property occurs, and in addition the person making delivery of the tangible personal property shall complete the affidavit portion of the form within two (2) days of the time of delivery to claim that the property was purchased exempt from sales tax and delivered immediately out of state not to return to Kentucky for use.

(30) [255] Revenue Form 51A155, "Certificate of Exemption for Ratite Bird Production", shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of ratite birds, eggs, and supplies used in this agriculture pursuit.

(31) Revenue Form 51A156, "Certificate of Exemption for On-Farm Llama/Apaca Production" shall be presented to a retailer by a purchaser to claim exemption from sales and use tax on the purchase of llamas/apacas and supplies used in this agriculture pursuit.

(32) [340] Revenue Form 51A157, "Certificate of Exemption - Water Used in Raising Equine", shall be presented to a retailer by a person regularly engaged in raising equine as a business to claim exemption for the purchase of water used to raise equine.

(33) [65] Revenue Form 51A158, "Farm Exemption Certificate", shall be presented to a retailer by a person regularly engaged in the occupation of tilling and cultivating the soil for the production of crops, raising and feeding livestock or poultry; or raising and feeding llamas, alpacas, raptors, buffalo or aquatic organisms to claim exemption from sales and use tax on the purchase of certain tangible personal property.

(34) [593] Revenue Form 51A159, "On-Farm Facilities Certificate of Exemption for Materials, Machinery and Equipment", shall be presented to a retailer by a farmer or jointly by a farmer and a contractor to claim exemption from sales and use tax on the purchase of materials, machinery and equipment which will be incorporated into the initial construction of on-farm facilities exempt under the provisions of KRS 139.480.

(35) [429] Revenue Form 51A160, "Application for Truck Part Direct Pay Authorization", shall be used by the owner of a motor vehicle qualifying for the repair and replacement part exemption provided under KRS 139.480(32) to directly report and pay to the Department of Revenue sales and use tax that would have been remitted to the department by suppliers had the truck part direct pay authorization not been issued.

(36) [516] Revenue Form 51A161, "Truck Part Direct Pay Authorization", shall be issued by the Department of Revenue to authorize motor carriers to report and pay directly to the department the sales and use tax on all purchases of repair and replacement parts for motor vehicles and to authorize retailers to sell
motor vehicle repair and replacement parts directly to the authorized motor carrier without receipt of sales and use tax.

(37) [425] Revenue Form 51A162, "Kentucky Sales and Use Tax Truck Part Direct Pay Authorization (TP DPA) Purchase Report", shall be filed annually by motor carriers using the truck part direct pay authorization to report purchases of repair and replacement parts for motor vehicle for the previous calendar year.

(38) Revenue Form 51A163, "Application for Charter Bus Part Direct Pay Authorization", shall be used by the owner of a charter bus qualifying for the repair and replacement part exemption provided under KRS 139.480(32)(b) to directly report and pay to the Department of Revenue sales and use tax that would have been remitted to the department by suppliers had the charter bus part direct pay authorization been issued.

(39) Revenue Form 51A200, "Application for Kentucky Enterprise Initiative Act (KEIA) Tax Refund Program", shall be used by qualified businesses to apply for a refund of sales and use tax paid on purchases of materials used in an approved project.

(40) [426] Revenue Form 51A205, "Kentucky Sales and Use Tax Instructions", shall be used by Kentucky sales and use tax permit holders, as a guide in filing their sales and use tax returns and maintaining permit account information.

(41) [427] Revenue Form 51A209, "Sales and Use Tax Refund Application", shall be completed by a Kentucky sales and use tax permit holder and submitted to the Department of Revenue within four (4) years from the date the tax was paid to apply for a refund of sales and use tax previously paid by the permit holder.

(42) [428] Revenue Form 51A205, "Pollution Control Tax Exemption Certificate", shall be completed by a business, governmental unit or institution to apply for a sales and use tax exemption on purchases of tangible personal property used to control or abate pollution.

(43) [429] Revenue Form 51A222, "Certificate of Exemption for Alcohol Production Facilities", shall be presented to a retailer by a holder of an alcohol production tax exemption certificate or jointly by a contractor and the holder of an alcohol production tax exemption certificate to claim exemption from sales and use tax on materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(44) [429] Revenue Form 51A223, "Application for Alcohol Production Facility Tax Exemption Certificate", shall be completed by a business seeking exemption from sales and use tax on the purchase of materials and equipment that will become a part of an alcohol production facility as provided by KRS Chapter 247.

(45) [444] Revenue Form 51A226, "Pollution Control Tax Exemption Certificate", shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

(46) [429] Revenue Form 51A229, "Certificate of Residence (Schools)", shall be issued to a retailer by an exempt nonprofit elementary or secondary school or the organizations they sponsor or that are affiliated with them to claim an exemption from sales and use tax on the purchase of tangible personal property that will be resold provided the proceeds from the resale of the property is used solely for the benefit of the elementary or secondary schools or their students.

(47) [429] Revenue Form 51A228, "Application for Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be completed by a business, governmental unit or organization and submitted to the Department of Revenue to apply for a sales and use tax exemption on the purchase of equipment and materials used in fluidized bed combustion technology.

(48) [444] Revenue Form 51A239, "Fluidized Bed Combustion Technology Tax Exemption Certificate", shall be issued by the Department of Revenue to a business, governmental unit or organization to advise that they qualify for corporation license tax, property tax, and sales and use tax benefits.

(49) [430] Revenue Form 51A241, "Registration for the Kentucky Sales and Use Tax Refund for Motion Picture and Television Production Companies", shall be completed by a motion picture production company and submitted to the Department of Revenue to register for a sales and use tax refund.

(50) [460] Revenue Form 51A242, "Application for Sales and Use Tax Refund for Motion Picture Production Company", shall be completed by a registered motion picture production company and submitted to the Department of Revenue within sixty (60) days after completion of the filming or production of the motion picture in Kentucky to request a refund of the Kentucky sales and use tax paid on purchases of tangible personal property made in connection with the filming and production of the motion picture in Kentucky.

(51) [447] Revenue Form 51A250, "Application for Transient Merchant Permit", shall be completed by a transient merchant and filed with the clerk in the county in which the business is to be conducted, or if urban county government, with the officer of the government who has responsibility for the issuance of business permits and licenses to obtain a permit before conducting any business in Kentucky.

(52) [448] Revenue Form 51B106A, "Sales and Use Tax Return Inquiry", shall be a form that is completed by the Department of Revenue to request additional information from a Kentucky sales and use tax permit holder regarding a sales and use tax return.

(53) [449] Revenue Form 51F008, "Federal Government Exemption from Kentucky Sales and Use Tax Notification", shall be issued by the Department of Revenue to a federal government unit which in turn is presented to a retailer by the federal government unit to claim exemption from sales and use tax on purchases of tangible personal property to be used in the exempt governmental function.

(54) [450] Revenue Form 51F009, "Purchase Exemption Notification", shall be issued by the Department of Revenue to a resident nonprofit charitable, educational or religious institution to advise the entity of the assigned purchase exemption number additional information concerning the exemption from sales and use tax.

(55) [451] Revenue Form 51F010, "Energy Direct Pay Authorization: Notification", shall be issued by the Department of Revenue to a business who has qualified for certain sales and use tax, corporation income, corporation license, and property tax benefits.

Section 17. Severance Taxes - Required Forms. (1) Revenue Form 55A001, "Application for Certificate of Registration for Coal Severs and/or Processors" shall be used by the Department of Revenue to register businesses that sever or process coal.

(2) Revenue Form 55A003, "Certificate of Registration - Severance Taxes", shall be used by the Department of Revenue to register coal severance taxpayers.

(3) Revenue Form 55A004, "Coal Severance Tax Seller's Certificate", shall be filed by the taxpayer to verify purchase coal deductible certificates.

(4) Revenue Form 55A100, "Coal Tax Return", shall be filed monthly by the taxpayer to report production and tax due.

(5) Revenue Form 55A100, "Part IV - Schedule of Coal Sales (Continuation)", shall be used by the taxpayer to report additional coal sales if there is no room on the return.

(6) Revenue Form 55A100D, "Coal Tax Return - Keep This Copy", a replica of the Coal Tax Return shall be completed by the taxpayer and retained in his files for informational purposes.

(7) Revenue Form 55A100D, * Part IV - Schedule of Coal Sales (Continuation)*, a replica of the Schedule of Coal Sales (Continuation) shall be completed by the taxpayer and retained in his files for informational purposes.

(8) Revenue Form 55A101, "Coal Tax Return Instructions", shall be included with the coal tax return mailed to the taxpayer to assist in the completion of his return.

(9) Revenue Form 55A131, "Credit Memorandum", shall be used by the department to issue a credit to the taxpayer for an overpayment rather than a refund.

(10) Revenue Form 55A209, "Sewerage Tax Refund Application", shall be used by the taxpayer for the purpose of requesting a refund of sewerage tax overpaid.

(11) Revenue Form 56A001, "Application for Certificate of Registration Minerals and Natural Gas Tax", shall be used by persons dealing in minerals, natural gas or natural gas liquids who wish to register with the Department of Revenue to acquire an
Section 21. Waste Tire Tax - Required Form. Revenue Form 73A051, "Motor Vehicle Tire Fee Report", shall be used by businesses making retail sales of new motor vehicle tires to report liability for motor vehicle tire fee and to report the number of waste tires recycled from customers.

Section 22. Incorporation by Reference. (1) The following materials incorporated by reference:

(a) Administrative - referenced material:
2. Revenue Form 10A001, "Request to Inspect Public Records", February, 1997;
5. Revenue Form 10A100, "Kentucky Tax Registration Application", June [February], 2005;
6. Revenue Form 10A100CS, "Kentucky Tax Registration Application", June [February], 2005;
7. Revenue Form 10A100-I, "Instructions for Kentucky Tax Registration Application", June [February], 2005;
8. Revenue Form 10A100CS-1, "Instructions for Kentucky Tax Registration Application", June [February], 2005;
9. Revenue Form 10A100-S, "Kentucky Tax Registration Supplemental Information Schedule", October, 2002;
11. Revenue Form 10A170, "Request For Notification of Administrative Regulation Filing", August, 2003;
13. Revenue Form 10F100, "Your Rights As A Kentucky Taxpayer", June, 2004;
15. Revenue Form 12A012, "Receipt of Seized Property", November, 1989;
17. Revenue Form 12A104, "Notice of Seizure", October, 1992;
18. Revenue Form 12A107, "Notice of Sale", October, 1996;
20. Revenue Form 12A110, "Release of Levy on Wages, Salary, and Other Income", October, 1996;
22. Revenue Form 12A500, "Certificate of Partial Discharge of Tax Lien", October, 1996;
Receipts", June, 2000;
(k) Marijuana and controlled substance - referenced material:
1. Revenue Form 73A701, "Instructions for Affixing Marijuana and Controlled Substance Tax Evidence (Stamp)", July, 1994;
2. Revenue Form 73A702, "Notice of Tax Lien KRS 138.870 Marijuana and Controlled Substance Tax", June, 2001;
3. Revenue Form 73A703, "Marijuana or Controlled Substance Stamps Order Form", October, 2002;
(l) Motor fuels - referenced material:
2. Revenue Form 72A005, "Application for Approval to Sell Watercraft Refund Motor Fuels - Public Boat Dock", February, 2000;
6. Revenue Form 72A02, "Kentucky Motor Fuels Tax Refund Permit", May, 1995;
12. Revenue Form 72A071, "Motor Fuels Tax Refund Bond - City and Suburban Bus, Nonprofit Bus, Senior Citizen Transportation, or Taxicabs", October, 2005 (July-1984);
13. Revenue Form 72A072, "Application for Motor Fuel Refund - City and Suburban Bus Companies, Nonprofit Bus Companies, Senior Citizen Transportation and Taxicab Companies", August, 2005 (May,1994);
14. Revenue Form 72A073, "Application for Approval to Receive a Refund of Tax on Motor Fuels Consumed by City and Suburban Buses, Nonprofit Buses, Senior Citizen Transportation and Taxiobs", June, 1999;
15. Revenue Form 72A075, "Receipts of Unreported Alcohol or Other Additives", August, 2005;
18. [17] Revenue Form 72A080, "Report of Gasoline Received From Licensed Kentucky Dealers", February, 2002;
23. [22] Revenue Form 72A083, "Report of Gasoline Received from Terminal or Refinery", June, 1988;
35. [34] Revenue Form 72A110, "Certification of Special Fuels Nonhighway Use", December, 2005 (September, 2002);
36. [35] Revenue Form 72A124, "Report of Kerosene Received and Blended", June, 2002;
37. [36] Revenue Form 72A127, "Special Fuels Dealer's Schedule of Sales Qualifying for State or Local Government Agency Credit", June, 2002;
38. [37] Revenue Form 72A128, "Special Fuels Dealer's Schedule of Sales Qualifying for Nonprofit Religious, Charitable or Educational Organization Credit", June, 2002;
39. [38] Revenue Form 72A129, "Special Fuels Schedule of Sales Qualifying for Commercial Off-Road Use Tax Credit (Undyed Diesel)", June, 2002;
40. [39] Revenue Form 72A131, "Special Fuels Dealer's Schedules of Sales Qualifying for Agricultural Tax Credit", June, 2002;
41. [40] Revenue Form 72A132, "Special Fuels Dealer's Schedule of Sales Qualifying for Residential Heating Tax Credit", June, 2002;
42. [41] Revenue Form 72A135, "Application for Kentucky Motor Fuels Tax Refund Permit", September, 2002;
44. [43] Revenue Form 72A139, "Report of Special Fuels Received from Licensed Kentucky Dealers", July, 2000;
57. [56] Revenue Form 72A172, "Report of Special Fuels Withdrawals to Licensed Kentucky Dealers", July, 2000;
58. [57] Revenue Form 72A174, "Report of Special Fuels Withdrawals Exported or Sold for Export", July, 2000;
59. [58] Revenue Form 72A175, "Report of Special Fuels Withdrawals from Terminal Storage", July, 2000;
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103. [83] Revenue Form 62A376I, "Instructions Intangible Property Tax Return", October, 2004;
116. [106] Revenue Form 62A388, "Property Valuation Administrator's Bond", September, 2005 [August, 2006];
118. [107] Revenue Form 62A400, "Notice of Distrain", August, 1983;
120. [109] Revenue Form 62A405, "Notice of Sale of Tax Bills", October, 1991;
125. [114] Revenue Form 62A500-SI, "Dealer's Inventory Listing for Linear Intangible Personal Property Tax Return", October, 2005 [September, 2004];
127. [114] Revenue Form 62A600, "Domestic Savings and Loan Tax Return", September, 2004;
129. [117] Revenue Form 62A601-S1, "Schedule A Apportionment Factor", September, 2004;
132. [120] Revenue Form 62A861, "Schedule 1 Summary of Deposits", June, 2000;
133. [121] Revenue Form 62A862, "Certification of Tax Rate for Bank Deposits Franchise Tax", September, 2004;
137. [125] Revenue Form 62A865, "Kentucky Intangible Property Tax - Margin Accounts", March, 1999;
141. [129] Revenue Form 62A878, "Omitted Intangible Worksheet", March, 1999;
142. [130] Revenue Form 62A880, "Omitted Personal Property Assessment", February, 2004;
143. [131] Revenue Form 62B001, "Unmined Coal Tax Notice (Sublease)", March, 2002;
144. [132] Revenue Form 62B002, "Unmined Coal Tax Notice (Lessee)", March, 2002;
145. [133] Revenue Form 62B003, "Unmined Coal Tax Notice (Owner)", March, 2002;
146. [134] Revenue Form 62B010, "Notice of Assessment on Unmined Coal", March, 2002;
147. [135] Revenue Form 62B011, "Limestone, Sand, or Gravel Tax Notice", March, 2002;
149. [137] Revenue Form 62B013, "Clay Property Assessment Notice", March, 2002;
150. [138] Revenue Form 62B014, "Undeveloped Oil and Gas Assessment Notice", March, 2002;
151. [139] Revenue Form 62B015, "Gas Assessment Notice", March, 2002;
156. [144] Revenue Form 62F015, "PVA Open Records Commercial Fee Guidelines", May, 2002;
158. [146] Revenue Form 62F031, "Appeal to Local Board of Assessment Appeals", January, 2000;
160. [148] Revenue Form 73A100, "Race Track Par-Mutuel and Admissions Report", June, 2003;
2. Revenue Form 51A102, "Kentucky Sales and Use Tax Return and Worksheet", January, 2006 [July, 2004];
5. Revenue Form 51A103E, "Kentucky Accelerated Sales and Use Tax Return and Worksheet - Electronic Funds Transfer", July, 2004;
7. Revenue Form 51A105, "Resale Certificate", January, 2005;
9. Revenue Form 51A110, "Direct Pay Authorization", August, 1997;
Certification Form*, December, 2005:
2. Revenue Form 75A002, "Telecommunications Provider Tax Return", December, 2005:
3. Revenue Form 75A900, "Telecommunications Tax Application", December, 2005:
(a) Transient room tax - referenced material: Revenue Form 72A003, "Transient Room Tax Monthly Return", April, 2005; and
(b) Utility gross receipt license tax - referenced material: Revenue Form 72A900, "Utility Gross Receipts License Tax Application", July, 2005:
2. Revenue Form 73A031, "Utility Gross Receipts License Tax Return", August, 2005:
3. Revenue Form 73A901(l), "Instructions for Utility Gross Receipts License Tax Return", January, 2006:
5. Revenue Form 73A902-V, "Kentucky Utility Gross Receipts License Tax Payment Voucher", August, 2005:
6. Revenue Form 73F010, "Utility Gross Receipts License Tax", March, 2005:

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 5:45 p.m.
R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed regulation shall be held on March 31, 2006 at 1 p.m. at 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this department in writing by March 24, 2006, 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 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 will be accepted through March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Edward A. Mattingly, Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-3894, email eddie.mattingly@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Edward A. Mattingly
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This amended administrative regulation updates the required revenue forms incorporated by reference.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for the Department of Revenue to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This administrative regulation incorporates by reference the required revenue forms.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the required forms administered by the Department of Revenue.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment updates the forms manual regulation to include new forms, replace superseded forms with successor forms, and eliminate obsolete forms.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the forms manual regulation to include new forms, replace superseded forms with successor forms and eliminate obsolete forms.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(3) authorizes the Department of Revenue to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation incorporating the forms by reference. This amended administrative regulation updates the required revenue forms incorporated by reference.
(d) How the amendment will assist in the effective administration of the statutes: The amendment incorporates by reference the most current forms administered by the Department of Revenue.
(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers and their representatives will be affected by the listing of all forms administered by the Department of Revenue in an administrative regulation. Local government will be affected to the extent they utilize forms administered by the Department of Revenue. The Department of Revenue will be affected to the extent that it administers the referenced forms.
(3) 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: Taxpayers will benefit from an updated incorporation of forms administered by the Department of Revenue.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: 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 because the requirements of this regulation apply to every taxpayer.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(Amendment)

103 KAR 15:060. Income classification; business and nonbusiness.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.130(1) [Chapter 13A]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120
[The Kentucky income tax law] contains provisions for assigning to Kentucky the business income and nonbusiness income of multi-
state corporations. This administrative regulation establishes criteria for classification of corporate income into its business and non-business components.

Section 1. Definitions. (1) "Acquisition" means the act of obtaining an interest in property.
(2) "Allocation" means the allocation of nonbusiness income specifically assigned or allocated to one (1) or more specific jurisdictions.
(3) "Apportionment" means business income divided among jurisdictions by use of the three (3) factor formula in KRS 414.120(6).
(4) "Business Income" is defined in KRS 414.120(1)(a).
(5) "Disposition" means the act or the power to relinquish or transfer an interest in or control over property to another, in whole or in part.
(6) "Integral part" means property that constitutes a part of the composite whole of the trade or business, each part of which gives value to every other part, in a manner which materially contributes to the production of business income.
(7) "Management" means the oversight, direction, or control directly or by delegation, of the property for the use or benefit of the trade or business.
(8) "Nonbusiness Income" is defined in KRS 414.120(1)(a).
[General. If a corporation has income from activities within Kentucky and within other states, the division of income and the resulting determination of the net income within Kentucky is determined by the allocation and apportionment provisions in KRS 414.120(6). Thus, the apportionment factor is determined for the portion of the entire net income constitutes "business income" and which portion constitutes "nonbusiness income." The various items of nonbusiness income are then directly allocated to each state pursuant to the provisions of KRS 414.120. Business income is divided among the states where the business is conducted based upon the property, payroll and sale apportionment factors in KRS 414.120. The sum of:

(1) Nonbusiness Income allocated to Kentucky, and
(2) Business Income attributed to Kentucky by the apportionment formula constitutes the amount of the corporation's entire net income which is subject to tax under KRS Chapter 141.

Section 2. Determination of Business Income. In determining whether income is business income, the Department of Revenue shall apply both the transactional test and the functional test.

Section 3. Transactional Test. Business income arising from transactions and activities in the regular course of the taxpayer's trade or business.
(1) If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Kentucky, the resulting income of the transaction or activity is business income for Kentucky. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Kentucky.
(2) For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most frequently-occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are not for the operations of the trade or business, such activities do not satisfy the transactional test. The transactional test includes:
(a) Income from sales of inventory, property held for sale to customers, and services which are commonly sold by the trade or business.
(b) Income from the sale of property used in the production of business income of a kind that is sold and replaced with some regularity, even if replaced less frequently than once a year. The corporation shall classify income as business or nonbusiness income on a consistent basis. If the corporation is not consistent, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

Section 4. Functional Test. Business income also includes income from tangible and intangible property, including any interest in, control over, or use in the property held directly, beneficially, by contract, or otherwise, that materially contributes to the production of business income, if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
(1) Under this functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient if the property from which the income is derived is, or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within this state. Property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time (generally, five years is sufficient) or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes, has lost its character as a business asset and is not subject to the rules of the preceding sentence. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed in safe keeping.
(2) Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently-occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income. If the property is or was used in the taxpayer's trade or business operations, unless the property has been converted to nonbusiness use. Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired.
(3) Under the functional test, income from intangible property is business income if the intangible property serves an operational function as opposed to solely an investment function. The intangible property serves an operational function if it is or was held in furtherance of the taxpayer's trade or business as evidenced by the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of the property is limited to solely an investment function for a period of five (5) years or more.
(4) If the property is or was held for furtherance of the taxpayer's trade or business, then income from that property may be business income, even though the actual transaction or activity involving that property does not occur in Kentucky.
(5) An item of property shall be presumed to be integral to the taxpayer's trade or business operation if the taxpayer:
(a) Takes a deduction from business income that is apportioned to Kentucky or
(b) Includes the original cost in the property factor.
No presumption arises from the absence of any of these actions.
(6) Application of the functional test is generally unaffected by the form of the property (e.g., tangible or intangible property, real or personal property). Income arising from an intangible interest as, for example, corporate stock or other intangible interest in a business or a group of assets, is business income if the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. Thus, while apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same
Trade or business; establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportioned income if the holding of the intangible interest served as operational asset.

Section 5. Relationship of Transactional and Functional Tests to U.S. Constitution. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict sales from apportioning income that has no rational relationship with the taxing state. Satisfaction of either the transactional test or the functional test complies with this constitutional requirement, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) be tied to the same trade or business that is being conducted within this state.

Section 6. For taxable years beginning after December 31, 2004, corporations defined in KRS 141.010(24)(a) to (h), limited liability entities, limited partnerships, and S corporations, shall include as part of their calculation of taxable income, separately stated items of distributive share income. The separately stated items of distributive share income shall be deemed business income if the items meet the transactional test, functional test, or a holding period of less than five (5) years in the case of an investment.

Section 7. Expenses Related to Nonbusiness or Nontaxable Income. (1) KRS 141.010(13)(c) requires that any deduction allowed under Chapter 1 of the Internal Revenue Code shall be reduced by expenses directly or indirectly related to nontaxable or nonbusiness income. If actual expenses, including interest, salaries, general and administrative, and other similar expenses, cannot be related directly to such income, one (1) of the following formulas shall be used:

(a) Ratio of cost of costs producing nonbusiness or nontaxable income to total gross receipts times interest expense, interest expense represents all expenses incurred in the stewardship or maintenance of nonbusiness or nontaxable income. Other expenses may be used which more fairly reflect expenses attributable to the income or assets producing the nonbusiness/nontaxable income. Assets shall be valued at cost, and the investment account shall exclude equity;

(b) If the total nonbusiness/nontaxable income does not exceed fifty (50) percent of the total gross receipts, the expenses not deductible in method one (1) above may be reduced proportionately but not to exceed fifty (50) percent of the calculated expenses;

(c) 1.75 percent of the cost of assets producing nonbusiness/nontaxable income;

(d) Ratio of cost of costs producing nonbusiness/nontaxable income to total gross receipts times interest expense, officers’ salaries, and general administrative expenses. The sum of these or any reasonable combination of these expenses, and

(e) A flat percentage, one (1) percent to one hundred percent of nonbusiness/nontaxable income. The percentage used shall be reasonable and reflect the expenses attributable to the stewardship or maintenance of the assets producing such income.

(2) KRS 141.010(13)(c) requires a corporation to relate expenses to nonbusiness and nontaxable income. The formulas listed in subsection (1)(a) to (e) of this section for determining related expenses are formulas the department has found to be fair and reasonable and may either be used by the corporation or assist the corporation in developing a method more suitable to its particular situation. On audit by the department, the formula or expenses related to nonbusiness/nontaxable income of the taxpayer, are subject to review and possible adjustment even though one (1) of the formulas above was used. [3] The word “apportionment” generally refers to the division of net income among states by the formula-containing apportionment factors, and the word “allocation” generally refers to reallocation of net income to a state.

Section 4. Business and Nonbusiness Income: Definitions. “Business income” is income arising from transactions and activities in the regular course of the corporation’s trade or business and includes income from tangible and intangible property if its acquisition, management, or disposition constitute integral parts of the regular trade or business operations. The business income is the portion of the corporation’s entire net income which arises from trade or business operations. “Net income” is business income unless it is clearly classified as nonbusiness income under KRS 141.100 and related administrative regulations. “Nonbusiness income” means all income other than business income.

Section 5. Business and Nonbusiness Income: Application of Definitions. Income classifiable by the customary labels, such as, interest, rent, royalty, and capital gains does not determine whether income is business or nonbusiness. Gain or loss reorganization, the sale of property, for example, is nonbusiness income or nonbusiness income depending upon the relation to the corporation’s trade or business. The following are rules and examples for determining whether a particular type of income is business or nonbusiness income:

(1) Rent and royalty; real and tangible personal property. Rental and royalty income from real and tangible property—business income. The rental or lease of the property is related to or incidental to the principal business activity or the rental or lease of the property is related to or incidental to the principal business activity:

(a) Example: the corporation operates a multi-state car rental business. The income from car rentals is business income since it is the corporation’s principal business;

(b) Example: the corporation leases in the heavy construction business and 4—uses equipment such as cranes, tractors, and earth moving vehicles. The corporation makes short-term leases of the equipment when particular pieces of equipment are needed on a job. The rental income is business income;

(c) Example: the corporation operates a multi-state chain of men’s clothing stores. It purchases a five (5) story office building primarily for use in its principal business. It uses the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two (2) floors are leased to others. The rental income is business income;

(d) Example: the corporation operates a multi-state chain of men’s clothing stores. It invests in a twenty (20) story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining eighteen (18) floors are leased to others. The rental income is nonbusiness income;

(e) Example: the corporation operates a multi-state chain of grocery stores and purchases. As an investment, an office building in another state with surplus funds and leases the entire building to others. The net rental income is nonbusiness income;

(f) Example: the corporation constructed a plant in 1930 as a part of its multi-state reprocessing business. On June 20, 1970, the plant was closed and put up for sale. The plant was rented from July 1, 1970, until sold in November, 1974. The rental income is business income and the gain on the sale of the plant is business income;

(g) Example: the corporation operates a multi-state chain of grocery stores. It owned an office building which is occupied as its corporate headquarters. Because of inadequate space, it acquired a new and larger building for its corporate headquarters. The old building was rented to an investment company under a five (5) year lease. Upon expiration of the lease, the building was sold at a gain (or loss). The rental income received over the lease period is nonbusiness income and the gain (or loss) on the sale of the building is nonbusiness income;

(h) Example: the corporation is engaged in extracting natural resources. The corporation owns and operates leases and operates mines or wells which are located in several states. For various reasons, the corporation cease actual operation of the properties and leases or subleases mineral rights to others. Royalties are paid to the corporation by the operators based on units extracted. The royalty income is nonbusiness income.

(i) Example: the corporation is engaged in lumber and related wood products business in various states. The corporation owns or leases timberlands which are used as raw materials for its lumber business. Some of the land is unaltable and the corporation leases or subleases mineral rights to others. Royalties are
paid to the corporation based on units extracted. The royalty income is business income.

(5) Example: the corporation acquires undeveloped land for future expansion of its multistate manufacturing business. The expansion plans are later discarded and mineral rights under the land are sold to a third party. The corporation receives royalties based on units extracted. The royalty income is nonbusiness income.

(2) Gains or losses from sale of assets. As a general rule, gain or loss from the sale, exchange or other disposition of real, tangible, or intangible personal property is business income if the property was used by the corporation to produce business income. However, the gain or loss is nonbusiness income if the property was later utilized principally for the production of nonbusiness income or otherwise was removed from the property factor.

(a) Example: in conducting its multistate manufacturing business, the corporation systematically replaces automobiles, machinery, and other equipment. The gains or losses resulting from those sales are business income.

(b) Example: the corporation constructed a plant in 1930 as a part of its multistate manufacturing business. In 1971 the property was sold at a gain while it is in operation by the corporation. The gain is business income.

(c) Example: same as above except that the plant is sold on June 30, 1970, and put up for sale but was not sold until November, 1971. The gain is business income.

(d) Example: same as above except that the plant was rented from July 1, 1970 until sold in November, 1971. The rental income is business income and the gain on the sale of the plant is business income.

(3) Interest. Interest income is business income if the intangible which earned the interest arises out of or was created by a business activity of the corporation and when the purpose for acquiring the intangible is directly related to the business activity.

(a) Example: the corporation operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials are received with installment sales and revolving charge accounts. The interest income is business income.

(b) Example: the corporation operates a multistate manufacturing business. The taxpayer receives a federal income tax refund and collects a judgment against the debtor. Both the tax refund and the judgment bore interest. The interest income is business income.

(c) Example: the corporation operates a multistate manufacturing and wholesaling business. It maintains special accounts to cover, among others, workers' compensation claims, rain and storm damage, machinery replacement, etc. The funds in those accounts are invested at interest. Similarly, the corporation temporarily invests funds intended for payment of federal, state, and local tax obligations. The interest income is business income.

(d) Example: the corporation operates a multistate money order and traveler's check business. In addition to the fees received from selling money orders and traveler's checks, the corporation earns interest income by investing the funds pending their redemption. The interest income is business income.

(e) Example: the corporation operates a multistate manufacturing and retailing business. It usually has working capital and extra cash totaling $2,000,000 which it regularly invests in short-term interest-bearing securities. The interest income is business income.

(f) Example: same as above except the corporation's money order subsidiary pays for $2,000,000 bonds issued by the corporation. The funds are placed in a separate interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is nonbusiness income.

(4) Dividends received after December 31, 1980, are excluded from Kentucky gross income by an amendment to KRS 141.010.

(5) Patent and copyright royalties. Patent and copyright royalties are business income if the patent or copyright was created or used as a part of the corporation's principal business.

(6) Example: the corporation operates a multistate business of manufacturing and selling industrial chemicals. In connection with that business, it obtained patents on certain of its products. It licensed the production of these products to foreign countries, and received royalties. The royalties are business income.

(b) Example: the corporation operates a music publishing business and holds copyrights on numerous songs. The corporation acquires the assets of a small publishing company, including music copyrights. These acquired copyrights are then used in its business. Any royalties received on these copyrights are business income.

(c) Example: same as last example, except that the acquired company also held the patent on a type of phonograph needle. The corporation does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent are nonbusiness income.

Section 8. [6] Proration of Deductions. Any allowable deduction[s] that applies to both business and nonbusiness income or to more than one (1) [7]trade or business[,] shall be prorated to those classes of income or trades or businesses by the formulas listed in Section 7 of this administrative regulation [a formula-processed by the cabinet].

Section 9. Revenue Policy 51P150 "Expenses Related to Nonbusiness Nontaxable Income", is withdrawn, since the policy has been incorporated into this regulation.

Section 10. The amendments to this administrative regulation shall apply to tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 27, 2006
FILED WITH LRC: February 1, 2005 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 22, 2005 at 1 p.m. in Training Room A, 3rd Floor, 200 Fair Oaks, 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 the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 150B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for classification of corporate income into its business and nonbusiness components and clarifies that Kentucky follows both the transactional and functional tests.

(b) The necessity of this administrative regulation: This administrative regulation further qualifies a provision of the Governor's tax modernization legislation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Da-
part of Revenue to promulgate administrative regulations for the administration of tax statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes criteria for classification of corporate income into its business and nonbusiness components and clarifies that Kentucky follows both the transactional and functional tests.

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

(e) How the amendment will change this existing administrative regulation: These changes are clarifications needed in light of the change in the Kentucky nexus standard.

(b) The necessity of the amendment to this administrative regulation: In 2005, the General Assembly changed the nexus standard in Kentucky. This administrative regulation is necessary to provide guidance on a portion of those changes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the ease of administration of Kentucky tax statutes.

(c) How the amendment will assist in the effective administration of the statutes: This administrative regulation will help taxpayers determine what is business income and what is nonbusiness income under KRS 141.120.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual trying to determine Kentucky nexus will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation. If new, or by the change, if it is an amendment: This amendment should provide more detailed criteria for the administration of this new nexus standard.

(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: Agency funds will be used for enforcement.

(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 increased fees or funding will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers in that group.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue

(AMENDMENT)

103 KAR 18:200. Consolidated Kentucky corporation income tax return.

RELATES TO: KRS 141.200

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.200 establishes the conditions for the filing of a consolidated return. KRS 141.050(4) requires the Department to establish required income tax forms. This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.200, with respect to elective consolidated returns.

Section 1. Definitions. (1) "Combined return" means a Ken-
tucky corporation income tax return by which Kentucky taxable income is reported and attributed to members of a unitary business group using the unitary business concept.

(2) "Common parent corporation" means the member of an affiliated group:

(a) That directly owns stock meeting the requirements of Section 150(a)(2) of the Internal Revenue Code in at least one (1) other member of the affiliated group; and

(b) Whose stock is not owned directly by any other member of the affiliated group as required by Section 150(a)(2) of the Internal Revenue Code.

(3) "Election period" means a period of ninety-six (96) consecutive calendar months that:

(a) Begins prior to January 1, 2005; and

(b) Begins [beginning] with the first day of the first taxable year for which an election to file a consolidated return is made and ending on the last day of the taxable year which includes the 96th consecutive calendar month provided the affiliated group remains in existence in accordance with Treasury Regulation sec. 1.1502-75(d).

(4) "Exempt from taxation" means the corporations listed in KRS 141.040(1)(a) through (h).

(5) "Unitary business concept" means a method of determining taxable income within a state based on the unitary business group's activities within that state.

(6) "Unitary business group" means a group of related corporations which share or exchange value as evidenced by the existence of the following characteristics:

(a) The operation of one (1) corporation is dependent upon, or contributes to, the operation of another corporation;

(b) There is a unity of ownership, operation, and use among the corporations; or

(c) The corporations exhibit functional integration, centralization of management, and economies of scale.

Section 2. Election to File a Consolidated Return. (1) General rule.

(a) An election to file a consolidated return shall be made by the common parent corporation on behalf of all members of the affiliated group by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, or on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170, for the first taxable year for which the election is made.

(b) Except as provided by subsections (2) and (3) of this section, if "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722, is not filed within the period prescribed by paragraph (a) of this subsection:

1. An affiliated group shall be deemed not to have made an election; and

2. Each member of the affiliated group subject to tax pursuant to KRS 141.040 shall file a separate return pursuant to KRS 141.200(3) for taxable years that begin prior to January 1, 2005 [99].

(2) Transition rules.

(a) For a taxable year beginning prior to December 31, 1995 and ending on or after December 31, 1995, if an affiliated group filed a consolidated return and did not file "Election to File Consolidated Kentucky Corporation Income Tax Return", it may elect to file a consolidated return beginning with the taxable year if it mails "Election to File Consolidated Kentucky Corporation Income Tax Return" no later than February 15, 1998, to the Department of Revenue [Cabinet], Corporation Tax Section, P.O. Box 1382, Frankfort, Kentucky 40602-1302.

(b) For a taxable year ending on or after December 31, 1995, and prior to April 5, 1996, if the members of an affiliated group filed separate returns or a combined return, the affiliated group:

1. May elect to file a consolidated return beginning with the taxable year by filing "Election to File Consolidated Kentucky Corporation Income Tax Return", no later than February 15, 1998; and

2. Shall file a consolidated return amending the separate or combined returns no later than February 15, 1998.

(3) Taxable years following an election period.

(a) Except as provided in paragraphs [paragraph] (b) and (d) of 1720
this subsection, for any taxable year beginning after the expiration of the election period that ends prior to January 1, 2005, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return unless the affiliated group elects to file a consolidated return on or prior to the due date of the return due for a taxable year that ends prior to January 1, 2005. (b) The filing of a consolidated return on or before the date prescribed by KRS 141.160 for filing the return, or as extended pursuant to KRS 141.170 for the first taxable year that begins after the expiration of an election period [that ends prior December 31, 2004], shall: 1. Constitute a new election to file a consolidated return; and 2. Establish a new election period. (c) If the expiration of an election period occurs because an affiliated group ceases to exist, each member of the affiliated group subject to Kentucky corporation income tax in accordance with KRS 141.040 shall file a separate return beginning with the first taxable year immediately following the date the affiliated group ceases to exist unless it becomes a member of another affiliated group which has elected to file a consolidated return. (d) Any election period that expires after January 1, 2005 shall result in the members of the affiliated group being subject to the provisions of KRS 141 200614 to (14). (4) Effect of an election. (a) An election to file a consolidated return shall be an irrevocable election binding on both the cabinet and the affiliated group for the election period. (b) The administrative provisions of Treasury Regulation sec. 1.1502-75(a) to (c) shall not apply for Kentucky purposes. Section 3. Corporations Included in a Consolidated Return. (1) If a consolidated federal return is filed. If a member of the affiliated group electing to file a consolidated return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the corporations that: (a) Were included in the consolidated federal return for the taxable year; and (b) Are not exempt from taxation. (2) If a consolidated federal return is not filed. If no member of an affiliated group electing to file a consolidated return pursuant to Section 2 of this administrative regulation is included in a consolidated federal return for the taxable year, the Kentucky return shall include the members of the affiliated group as defined in Section 1504(a) of the Internal Revenue Code and related regulations that are not exempt from taxation. Section 4. Carryover or Carryback of Items of Loss, Deduction or Credit. (1) Carryover or carryback between a separate return and a consolidated return. If a separate return was filed for taxable years prior to the taxable years for which a consolidated return is filed, and a carryover or carryback occurs between the separate return and the consolidated return, the carryover or carryback amount shall be: (a) Limited as provided by Section 1502 of the Internal Revenue Code and related regulations; and (b) Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code. (2) Carryover or carryback between a combined return and a consolidated return. (a) A combined return shall be deemed a consolidated return for the purpose of determining a carryover or carryback amount, if: 1. Combined return using the unitary business concept was filed for taxable years ending on or before December 30, 1999; and 2. Consolidated return is filed for taxable years ending on or after December 31, 1999; and 3. Carryover or carryback occurs between the combined return and the consolidated return. (b) The carryover or carryback amount shall be: 1. Limited as provided by Section 1502 of the Internal Revenue Code and related regulations; and 2. Adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code. Section 5. Deferred Intercompany Transactions. If, during a year when a separate or combined return was filed, a gain or loss on a deferred intercompany transaction was deferred for federal purposes, and was not deferred for Kentucky purposes, the gain or loss, when recognized for federal purposes, shall be adjusted for Kentucky purposes to reflect the prior reporting of the transaction. Section 6. Corporation Income Tax Computation for Taxable Years Beginning on or After January 1, 2005. During the Ninety-Six (96) Month Election Period. For taxable years beginning on or after January 1, 2005, the amendments to KRS 141.040 enacted by Ky Acts 2003, 168 by the 2005 General Assembly shall apply to the computation of the tax due under KRS 141.040 for the affiliated group. Section 7. Required Forms. (1) "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall contain the following: (a) Information identifying the affiliated group; (b) The taxable income computation; (c) The income tax computation; (d) The license tax computation for tax periods ending prior to December 31, 2005; (e) The tax payment summary; and (f) The signature of a principal officer or chief accounting officer. (2) "Kentucky Corporation Income and License Tax Return", Revenue Form 720, Schedule A, Apportionment and Allocation, shall be attached to Revenue Form 720, if applicable, and shall contain the: (a) Computation of the apportionment fraction; (b) Apportionment and allocation of income; (c) Beginning and ending year balances of Kentucky real and tangible property; and (d) Beginning and ending year balances of total real and tangible property. (3) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K, shall be attached to "Kentucky Corporation Income and License Tax Return", Revenue Form 720 and shall contain the: (a) Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070; (b) Six (6) digit Kentucky Account Number for each corporation listed pursuant to paragraph (a) of this subsection; and (c) Amount remitted for each corporation. (4) A copy of the Federal Form 7004, "Application for Automatic Extension of Time to File Corporation Income Tax Return", or "Application for Six (6) (Month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A7205SL, shall be filed to obtain an extension of time to file "Kentucky Corporation Income and License Tax Return", Revenue Form 720 pursuant to the provisions of KRS 131.081(11), 131.170 and 141.170. Revenue Form 41A2205SL shall contain the: 1. Name of each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070; 2. Six (6) digit Kentucky Account Number for each corporation listed pursuant to paragraph (a) of this subsection; and 3. Amount remitted for each corporation. (5) An application for extension filed pursuant to paragraph (a) of this subsection shall constitute an extension for each member of the affiliated group subject to Kentucky corporation license tax pursuant to KRS 136.070. Section 8. Filing a Consolidated Return. "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall: (1) Be filed by the common parent corporation for the affiliated group; and (2) Contain the following forms, if applicable, attached in the following order: (a) "Election to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722; (b) "Kentucky Affiliations and Payment Schedule", Revenue

(1) If the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070 for tax periods that end prior to December 31, 2005, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, reporting the consolidated computation shall report the separate Kentucky license tax computation for the common parent corporation.

(2) If a member of the affiliated group other than the common parent corporation is subject to Kentucky license tax pursuant to KRS 136.070, a separate "Kentucky Corporation Income and License Tax Return", Revenue Form 720, reporting the license tax computation, shall be submitted, but not attached to, the consolidated return submitted by the common parent corporation.

(3) If the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall report the consolidated income tax computation for the members of the affiliated group and the consolidated license tax computation for these corporations that are considered as one (1) pursuant to KRS 136.071.

(4) If a member of the affiliated group other than the common parent corporation qualifies and elects the consolidated license tax provision of KRS 136.071, "Kentucky Corporation Income and License Tax Return", Revenue Form 720, shall:
   (a) Report the consolidated license tax computation for those corporations that are considered as one (1) pursuant to KRS 136.071; and
   (b) Be submitted with, but not attached to, the consolidated return submitted by the common parent corporation.

Section 10. [9] Incorporation by Reference. (1) The following forms are incorporated by reference:
   (a) "Kentucky Corporation Income and License Tax Return and Instructions", Revenue Form 720 (2005)[(1996)];
   (b) "Application for Six (6) Month Extension of Time to File Kentucky Corporation Income and License Tax Return", Revenue Form 41A720SL (2005)[(1996)];
   (c) "Electio to File Consolidated Kentucky Corporation Income Tax Return", Revenue Form 722 (October 2004)[(1996)]; and
   (d) "Kentucky Affiliations and Payment Schedule", Revenue Form 851-K (2005)[(1996)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law. [These forms may be obtained or inspected at the Kentucky Department of Revenue [Cabinet], 200 Fair Oaks Lane, Frankfort, Kentucky 40601, or at any Kentucky Department of Revenue [Cabinet] Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.]

R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: January 27, 2006

FILED WITH LRC: February 3, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 30, 2006 at 10 a.m. in Training Room A, 3rd Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes terms, forms, and procedures required for the implementation of KRS 141.200, with respect to elective consolidated returns.
   (b) The necessity of this administrative regulation: This administrative regulation updates effective dates for forms and procedures relating to consolidated returns.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies that elective consolidated returns apply to certain tax periods and establishes the method for transitioning to nexus consolidated returns by the listed periods.
(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 paves the way for changes brought about by tax modernization nexus changes.
   (b) The necessity of the amendment to this administrative regulation: This amendment is necessary because of a change in the underlying statutes.
   (c) How the amendment conforms to the content of the authorizing statutes: It complies with the changes made by the 2005 General Assembly.
   (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation updates effective dates for forms and procedures relating to consolidated returns.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer filing consolidated returns or who will required to file consolidated returns under the newly amended or enacted tax statutes.
   (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation should provide them with procedural clarification.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
      (a) Initially: None
      (b) On a continuing basis: None
   (c) What is the source of the funding to be used for the imple-
mentation 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 regula-
tion, if now, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation estab-
lishes any fees, directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? Tiering was not applied be-
because the requirements of the regulation already apply one to a
select group of taxpayers who file consolidated
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(Amendment)
103 KAR 18:070. Supplemental wages and other payments
subject to withholding.
RELATES TO: KRS [144-206.7] 141.315
STATUTORY AUTHORITY: KRS 141.050(4), [144-206.7]
141.315
NECESSITY, FUNCTION, AND CONFORMITY: KRS
141.050(4) requires the Department of Revenue [Revenue Cabi-
net] to promulgate administrative regulations and prescribe the
forms and reports necessary to the proper administration of any
and all provisions of KRS Chapter 141. KRS 141.315 requires [and
144-206.7 requires] the department to promulgate adminis-
trative regulations governing certain specified types of payments.
This administrative regulation prescribes procedure for withholding
income tax on gambling winnings, [net-distributive-share-income
from-a-pass-through-entity] supplemental wages, and vacation
pay.
Section 1. Definitions. (1) "Gambling winnings" means win-
nings that are subject to withholding as defined by 26 U.S.C.
3402(q) of the Internal Revenue Code.
(2) "Lower-tier-pass-through-entity" means a member of a
pass-through entity that is itself a pass-through entity.
(3) "Member" means a shareholder of an S-corporation; a part-
ner in a general partnership, a limited-partnership, or a limited-li-
ability-partnership; or a member of a limited-liability-company in-
including a disregarded member.
(4) "Net-distributive-share-income" means the member's pro-
rata share of the total of the pass-through entity's income, gains,
and losses minus any deductions allowable as an adjustment-to-
gross-income in KRS 141.010(10) and apportioned to Kentucky
under KRS 141.020.
(5) "Pass-through-entity" means:
(a) An S-corporation;
(b) A partnership;
(c) A limited partnership, a limited-liability partnership or limited
liability company that is not taxed as a corporation for federal tax
purpose;
(6) "Supplemental wages" means payments made to an em-
ployee by the individual's [his] employer in addition to regular
wages.
Section 2. Gambling Winnings. Every person making a pay-
ment of gambling winnings shall deduct and withhold from the
payment the Kentucky income tax at the maximum tax rate provided
in KRS 141.020.
Section 3. [Net-Distributive-Share-Income. (1) For taxable
yeats ending on or after December 31, 2003, every pass-through
entity required to file an annual return under KRS 141.206(1) shall
withhold income tax at the maximum tax rate provided in KRS
141.020 on the net distributive share-income of each nonresident
individual-member. A lower-tier-pass-through-entity shall be subject
to this same requirement to withhold and pay income tax on the net
distributive share-income of each of its nonresident individual
members.
(2) The pass-through entity shall be liable to Kentucky for
the payment of the tax required to be withheld less any credits passed
through to the individual that are reasonably expected to be
claimed in the current tax year and shall recover the amount of tax
withheld from the member.
(3) Withholding shall not be required if:
(a) The member's net-distributive-share-income is less than
$1,000.
(b) The entity can demonstrate that the member's net-distrib-
utive-share-income is not subject to income tax, or
(c) The entity is a publicly traded partnership as defined by 26
U.S.C. Section 7704(b) of the Internal Revenue Code that is
 treated as a partnership for the purposes of the Internal Revenue
Code.
(4) The pass-through entity on or before the 15th day of the
fourth month after the end of its taxable year shall
(a) File with the Kentucky Revenue Cabinet, Revenue Form
40A200, "740NP-WH, Kentucky Nonresident Income Tax With-
holding on Net-Distributive-Share-Income Transmittal Report" rep-
porting the number of nonresident individual members, the total net-
distributive-share-income subject to withholding, and the total
amount of Kentucky income tax withheld.
(b) Provide each nonresident individual member with Revenue
Form 40A200, "740TE-WH, Kentucky Nonresident Income Tax With-
holding on Net-Distributive-Share-Income" or an approved substi-
tute statement showing the member's net-distributive-share-income
subject to withholding and the amount of Kentucky income tax
withheld;
(c) Remit the tax withheld.
(5) The reporting of net-distributive-share-income and payment
of tax due by the pass-through entity shall satisfy the filing re-
quirements of KRS 141.206 for a nonresident individual member
whose only Kentucky source income is net-distributive share-
income. The nonresident individual member may file a return to take
advantage of the graduated tax rates and apply the tax withheld
against tax imposed for the taxable year in which the income is
reported.
Section 4. Supplemental Wages. If supplemental wages are
paid at the same time as regular wages, the tax to be withheld
shall be determined as if the aggregate of the supplemental and
regular wages were a single wage payment for the regular payroll
period. If supplemental wages are paid at a different time, the em-
ployer shall determine the tax to be withheld by aggregating the
supplemental wages either with the regular wages for the current
payroll period or with the regular wages for the last preceding pay-
roll period within the same calendar year.
Section 4. (5) Vacation Pay. If an employee receives vacation
pay for the time of a vacation absence, the vacation pay is subject
to withholding as though it were a regular wage payment made for
the payroll period or periods which occur during the vacation. If
vacation pay is paid in addition to regular wages to an employee
who forgoes his vacation, the payments are treated as supple-
mental wages.
Section 6. Incorporation by Reference. (1) The following ma-
terial is incorporated by reference:
(a) Revenue Form 40A200, "740TE-WH, Kentucky Nonresi-
dent Income Tax Withholding on Net-Distributive-Share-Income," Sep-
tember, 2003; and
(b) Revenue Form 40A201, "740NP-WH, Kentucky Nonresi-
dent Income Tax Withholding on Net-Distributive-Share-Income
(2) This material may be inspected, copied, or obtained, sub-
ject to applicable copyright law, at the Kentucky Revenue Cabinet,
200 Fair Oaks Lane, Frankfort, Kentucky 40602, Monday through
Friday, 8 a.m. to 4:30 p.m.
R.B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: January 27, 2006
FILED WITH LRC: February 1, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 25, 2006 at 10 a.m. in Training Room A, 3rd Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals Inter-
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(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

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

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

(9) TIERING: Is tiering applied? Explain why tiering was or was not used. Tiering is applied to the extent that the administrative regulation explains differences in computing the tax depending on when the income is paid.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

(Amendment)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1), 324.045(1), 324.111(1), (2), (3), (4), (6), 324.117(1), (5), 324.160(4)(j), (m), (r), 324.410(1), 324.420(1), (2), (3), (4), (5)

STATUTORY AUTHORITY: KRS 324.117(5), 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to effectively carry out and enforce the provisions of [implement] KRS Chapter 324. This administrative regulation defines terms for 201 KAR Chapter 11 that are used in the implementation of KRS Chapter 324.

Section 1. Definitions. (1) "Academic credit hour" means:
(a) One (1) college semester hour; or
(b) Sixteen (16) fifty (50) minute hours of actual classroom attendance.

(2) "Contract deposit" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property after:
(a) The offer or counteroffer is accepted; and
(b) An executory contract exists.

(3) "False, misleading, or deceptive advertising" means an advertisement that is prohibited pursuant to KRS 324.117(1) because the advertisement:
(a) Is contrary to fact;
(b) Leads a person to a mistaken belief or conclusion; or
(c) Is knowingly made to induce a representation that is contrary to fact.

(4) "Fraud" or "fraudulent dealing" means a material misrepresentation that:
(a) Is:
1. Known to be false; or
2. Made recklessly;
(b) Is made to induce an act;
(c) Induces an act in reliance on the misrepresentation; and
(d) Causes injury.

(5) "Guaranteed sales price" means an offer or solicitation:
(a) To guarantee the sale of an owner's real estate; or
(b) To guarantee the purchase of the owner's real estate if the owner's real estate is not sold by the broker.

(6) "Inducement" means money, a free gift, a prize, or any other thing of value that a licensee would offer a potential client or customer. "Price" means an item of value that is:
(a) Offered to a prospective purchaser on a condition set forth in the offer to the prospective purchaser and
(b) Not a complementary item:
1. Refreshment, including a soft drink or snack, that is offered to the general public; or
2. Gift that:
   a. Has a value less than $100;
   b. Is given to the purchaser at or after the closing at which the purchaser's purchase of the real estate was consummated; and
   c. Was not offered prior to closing.

(7) "Rebate" means a payment of money or anything of value...
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by, or on behalf of, a licensee to a client or customer, or to a third party authorized by the client or customer to receive the payment that is in connection with the provision of real estate brokerage services. Examples of rebates directed to third parties include payments to charities, home inspectors, and moving services. A rebate shall not include compensation paid for real estate brokerage services to any third party who is not licensed in Kentucky to perform such services; a rebate shall not authorize a client or customer to allow or direct such payments to an unlicensed third party for performing such services.

(8) [(7)] "Required disclosure" means:
(a) In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement;
(b) In radio advertising, that the disclosure shall be verbal and clearly understandable; and
(c) In television advertising, that the disclosure shall:
   1. Be verbal and clearly understandable; or
   2. Be written and appearing on the screen at least three (3) seconds for the first line of lettering and one (1) second for each additional line of lettering, and in letters:
      a. Which are eighteen (18) video scan lines in size for letters which are all upper case; or
      b. Which are twenty-four (24) video scan lines in size for upper case capitals if upper case capitals and lower case letters are used.

(9) [(8)] "Without unreasonable delay" means within three (3) business days of the creation of an executory contract for the sale or lease of real property.

RON SMITH, Chairperson
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 6, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing for the administrative regulation shall be held on March 23, 2006 at 1:30 p.m., local time, in the "Darby Room" at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway in Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, 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 wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 1, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7249.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation outlines the definitions for several statutory requirements.
   (b) The necessity of this administrative regulation: Definitional sections are required to clarify certain key statutory terms.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation defines certain terms found in KRS Chapter 324.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The definitions provide clarification for licensees and consumers to understand certain statutory terms.
   (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 eliminates the definition of "prize" as that issue will be handled by the amendments to 201 KAR 11:121 and adds the definitions of "inducement" and "rebate".
   (b) The necessity of the amendment to this administrative regulation: In amending 201 KAR 11:121, it is necessary to delete the definition of "prize" and add the definitions of "inducement" and "rebate".
   (c) How the amendment conforms to the content of the authorizing statutes: The amendments to 201 KAR 11:121 will specifically allow licensees to offer rebates and inducements to their clients or customers when licensees disclose to them, in writing, the terms of the rebates or inducements. This amendment defines "inducement" and "rebate" as those terms are used in 201 KAR 11:121.
   (d) How the amendment will assist in the effective administration of the statutes: This amendment will simply remove a definition and add two additional ones due to a clarification and codification in another proposed amendment. This definitional change will eliminate any confusion and discrepancies between the two regulations.
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is simply a definitional amendment.
   (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment is simply eliminating the definition of a term and adding two additional ones.
   (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 will be 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 funding will be necessary.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are or will be established.
   (9) TIERING: Is tiering applied? Tiering was not used because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:121. Improper conduct.

RELATES TO: KRS 324.010(3), 324.160(4)(f), (i), (m), (o), (v), (w), (w), (5), (7), 24 C.F.R. 3500
STATUTORY AUTHORITY: KRS 324.281(5), 324.282
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 authorizes the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes requirements and standards for behavior considered improper conduct.

Section 1. The following shall be improper for any licensed agent.
(1) To accept or agree to accept, without written disclosure to the seller and buyer, or lessor and lessee, on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.

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(2)(a) To fail to disclose in writing to the licensee's clients or customers the terms of any rebate or inducement; 
(b) To engage, either through advertising, direct contact, or by others, to the general public, any prize, money, free gift, rebate or thing of value, as an inducement, other than the situations listed in paragraph (6) of this subsection. 
(c) To require or be in improper conduct to disseminate information: 
(1) About the fee or other compensation the licensed agent agrees to charge for his or her services; or 
(2) About inducements offered by the licensed agent's clients. 
(d) It shall not be improper conduct to: 
(e) Advertise the fee or other compensation the licensed agent agrees to charge for his or her services; 
(f) Advertise or distribute goods or services offered by others; 
(g) Advertise or distribute marketing materials bearing the name or logo of the licensee or licensee's broker or company, including but not limited to, matchbooks, magnet, pens, calculators, umbrellas, or calendars having a cost of not more than ten (10) dollars per item; 
(h) Pay for refreshments or the costs of meals consumed by clients, customers or prospective clients or customers. 
(i) Present any gift that does not exceed a cost of $100 or after closing to the participants in that closing. 
(j) Offer a prize or free gift at an event such as a fair, trade, exposition, or community event so long as such advertising is done only at the specific event and the cost of the prize or free gift does not exceed $500 per event per branch office. 
(k) Offer, in one-on-one situation, to provide any thing of value for a client or customer, so long as it is disclosed in writing and agreed to by the licensee and his or her client or customer. 
(3) To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. Nothing herein shall be construed to permit otherwise unlawful discrimination. 
(4) [6] To fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client: 
(a) Loyalty; 
(b) Obedience to lawful instructions; 
(c) Disclosure; 
(d) Confidentiality; 
(e) Reasonable care and diligence; or 
(f) Accounting. 
(5) [6] To advertise a guaranteed sales plan without required disclosure of: 
(a) Whether a fee is charged for participation; 
(b) Whether the real estate shall meet qualifications for participation; 
(c) Whether the purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and 
(d) Whether the owner of the real estate shall purchase other real estate listed for sale by the licensee or his designee. 
(6) [1] In print advertising, that the disclosure shall be in letters at least twenty-five (25) percent the size of the largest letters in the advertisement; and 
2. In television advertising, that the disclosure shall be: 
(a) Verbal and clearly understandable; and 
(b) In writing and appearing on the screen at least three (3) seconds for the first line of listing and one (1) second for each additional line of listing and in letters: 
(i) Which are eighteen (18) video scan lines in size for letters which are all upper case, and 
(ii) Which are twenty-four (24) video scan lines in size for upper case letters when upper case letters and lower case letters are used. 
(7) [f] To violate a statute or administrative regulation governing brokers, sales associates, or real estate transactions. 
(8) [6] To serve in the dual capacity of a real estate licensee and loan originator, if the real estate licensee, while acting in that capacity: 
(a) Fails to disclose the dual role in writing and fails to indicate in that disclosure that the licensee will receive additional payment for the loan origination activities; 
(b) Fails to contact the Department of Financial Institutions to register and pay the one-time fee for engaging in loan origination, if the licensee is engaged in loan origination as a part of his or her real estate activities to assist his or her real estate clients in obtaining financing; or 
(c) Receives payment but fails to perform the requirement in subparagraph 1 of this paragraph, plus at least five (5) of the remaining thirteen (13) specific activities listed in subparagraphs 2 through 14 of this paragraph below, as outlined by the Department of Housing and Urban Development and as set out in the Real Estate Settlement Procedures Act Statement of Policy 1999. 
1. Taking information from the borrower and filling out the application; 
2. Analyzing the prospective borrower's income and debt and prequalifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford; 
3. Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product; 
4. Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process; 
5. Initiating/ordering verifications of employment and verifications of deposits; 
6. Initiating/ordering requests for mortgage and other loan verifications; 
7. Initiating/ordering appraisals; 
8. Initiating/ordering inspections or engineering reports; 
9. Providing disclosures (truth in lending, good faith estimates, others) to the borrower; 
10. Assisting the borrower in understanding and clearing credit problems; 
11. Maintaining regular contact with the borrower, realtors, lender, between application and closing to apprise them of the status of the application and gather any additional information as needed; 
12. Ordering legal documents; 
13. Determining whether the property was located in a flood zone or ordering such service; and 
14. Participating in the loan closing; 
(d) Requests or receives compensation that is not commensurate with the actual work performed; or 
(e) Requests or receives compensation for work that is not actually performed by him or her. 
(8) [9] A broker-licensed in Kentucky to aid, abet, or otherwise assist an individual who is not actively licensed in Kentucky in the practice of brokering real estate in this state. This prohibition shall include a Kentucky broker assisting an unlicensed individual with the listing, selling, leasing or managing of any Kentucky property or assisting an unlicensed individual in representing any buyer or lessee seeking property in Kentucky. An unlicensed individual shall include an individual who may be affiliated with a national franchise and may have a license in another state but who does not have an active Kentucky license. 

Section 2. The following shall not be considered improper conduct: 
(1) To disseminate information about the fee or other compensation the licensed agent agrees to charge for his or her services; and 
(2) To disseminate information about inducements and rebates offered by the licensed agent or his or her clients or customers. 

RON SMITH, Chairperson 
APPROVED BY AGENCY: February 6, 2006 
FIL FD WITH I.R.C: February 8, 2006 at 4 p.m. 
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on the administrative regulation shall be held on March 23, 2006 at 1:30 p.m., local time, in the "Derby Room" at the Holiday Inn-Hurstbourne located at 1325 S. Hurstbourne Parkway in Louisville, Kentucky 40222. Individuals interested in being heard
at this hearing shall notify this agency in writing by March 16, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a 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 March 31, 2006. 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: Y. Denise Payne Wade, Staff Attorney, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, phone (502) 429-7250, fax (502) 429-7246.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Y. Denise Payne Wade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines what actions constitute "improper conduct" under the license laws.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to further outline what activities would fall under KRS 324.160(4)(v), the statute that prohibits improper conduct by licensees.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation outlines certain activities that are prohibited under KRS 324.160(4)(v).

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow licensees to offer rebates and inducements to their clients or customers when licensees disclose to them, in writing, the terms of the rebates or inducements.

(b) The necessity of the amendment to this administrative regulation: This amendment allows rebates and inducements if they are in writing.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment clarifies what will be allowed under the enabling statutes, with the required written disclosure.

(d) How the amendment will assist in the effective administration of the statute: Promulgating an administrative regulation allowing rebates and inducements and requiring them to be in writing will avoid confusion, protect the public, and prevent uneven regulation of the industry by the Kentucky Real Estate Commission, since without the regulation there would be a gap in enforcement during which time rebates and inducements could be offered verbally.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees will be subject to this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment: This amendment will allow rebates and inducements that licensees disclose, in writing, to clients and customers.

(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 will be 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 fees will be needed.

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

(9) TIERING: Is tiering applied? Tiering was not used, because this regulation should not disproportionately affect any particular group of people.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners (Amendment)


RELATES TO: KRS 312.019
STATUTORY AUTHORITY: KRS 312.019(9)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)(a) provides that the board may adopt and from time to time amend administrative regulations and that it may adopt a code of ethical conduct governing the practice of chiropractic. This administrative regulation is to delineate the minimum standards of professional and ethical conduct which all licensees shall maintain.

Section 1. All licensees shall abide by the following minimum standards of professional and ethical conduct:

(1) A licensee shall keep in confidence whatever he may learn about a patient in the discharge of professional duties. Information shall be divulged by him when required by law and when authorized by a patient.

(2) A licensee shall render care that is consistent with treatment and care that would be rendered by a reasonably prudent chiropractor licensed in the Commonwealth of Kentucky to each patient and shall give a candid account of a patient's condition to the patient [him or hers] or to those responsible for the patient's [his or her] care.

(3) A licensee shall give timely notice to his patient or to those responsible for a patient's care when he withdraws from a case so that another chiropractor may be obtained.

(4) A licensee shall not abandon [a patient] forever (a patient) a patient.

(5) A licensee shall practice his profession in accordance with the provisions of KRS Chapter 312 and the board's administrative regulations. [He shall avoid professional association with individuals of groups who do not practice according to such statutes and administrative regulations.]

(6) A licensee shall not advertise his services except as provided by those administrative regulations:

(a) Solicit patients directly, indirectly or through an agent;

(b) Advertise his services except as provided by those administrative regulations;

(c) Associate with or aid in any manner individuals or groups who engage in contrary practices.

(7) A licensee shall inform the patient of their clinical diagnoses, treatment plan, and expected outcome of treatment prior to the onset of care [not be identified in any manner with testimonials for proprietary products or devices advertised or sold directly to the public].

(8) A licensee shall not commit an act of sexual misconduct or sexual harassment or commit any act punishable as a sexual offense [hold forth, advertise or indicate possession of any degree of sexual promiscuity unless he is licensed by the board in such specialty].

(9) A licensee shall make no false statements on any board forms [obtain consultation if requested to do so by a patient. He shall not hesitate to seek consultation when he believes it to be advisable].

(10) A licensee shall refrain from chemical or substance abuse. The chemical or substance abuse does not have to take place in a chiropractic office for the Board to take action against a licensee [in any dispute between or among chiropractors involving matters of ethics, the matter in controversy shall be referred to the board for comment].

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(11) In any dispute between or among chiropractors regarding the diagnosis or treatment of a patient, the attending chiropractor has the responsibility for final decision.

(12) A licensee shall not pay or receive compensation for the referral of patients (except directly or indirectly on a professional service rendered by another chiropractor except:
(a) Before duly constituted professional bodies of inquiry or
judicial proceedings;
(b) When he is consulted by a patient of another chiropractor for diagnosis or treatment and then only to the extent necessary to properly advise such patient.

(13) (a) Telemarketing is permitted assuming that the telemar-
keclng is not targeted, taken from a general list of phone numbers, and does not violate the state’s no-call provisions.
(b) A chiropractor shall not contact or cause an accident victim to be contacted by his employee, agent, contractor, telemarketer, or anyone in concert with the chiropractor in violation of the Consumer Protection Laws of the Commonwealth of Kentucky.

(c) The licensee shall be held responsible for the content of any contact made by a telemarketer, agent, employee, or con-
tactor representing the chiropractor. [illegal, unethical and incom-
petent conduct by licensee shall be reported to the board.]

(14) A licensee shall charge only reasonable fees.

(15) No division of any professional fee shall be made except
upon the basis of actual services rendered.

(16) A licensee shall not pay or receive compensation for the referral of patients.

Section 2. The enumeration of the standards in Section 1 of this administrative regulation is not exhaustive of all of the standards of professional and ethical conduct expected of a licensee. The failure to mention a standard shall not be deemed to be a determination by the board that it does not exist.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 8 a.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Ken-
tucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glas-
gow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator

(1) Provide a brief summary of: What this administrative regu-
lation does:
(a) This administrative regulation sets the code of conduct for chiropractors practicing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth a code of conduct to place all chiropractors practicing in Kentucky on notice of the ethical ex-
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(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations including a code of ethical conduct governing the practice of chiropractic in Kentucky

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the ethical requirements for the practice of chiropractic in Kentucky, thereby adding clarity to the expectations for practitioners.

(e) 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 amended administrative regulation clarifies and updates the ethical standards which chiropractors practicing in the Commonwealth are expected to follow.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the code of ethical conduct, to

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting forth the code of ethical conduct to be followed by chiropractors in this state.

(d) How the amendment will assist in the effective administra-
tion of the statutes: This administrative regulation will clearly define the code of conduct in a manner that will alert chiropractors to the expected standards of practice as well as reduce the number of inquiries to the board.

(f) List the type and number of individuals, businesses, organi-

ations, or state and local governments affected by this administra-
tive regulation: This administrative regulation impacts the approximately 791 doctors of chiropractic licensed to practice in the Commonwealth of Kentucky.

(g) 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 amended administrative regulation will assist licensees by clarifying the code of ethical conduct which they must adhere to. Strengthening the standards and clarifying the code should provide practitioners with the knowledge necessary to avoid committing viola-

(h) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementa-
tion of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(i) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by licensees.

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

(k) State whether or not this administrative regulation estab-
lishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish any fees, nor does it directly or indirectly increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners (Amendment)

201 KAR 21:025. Board; officers, duties.

RELATES TO: KRS 312.019, 312.055
STATUTORY AUTHORITY: KRS 312.019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.055 provides for the election of certain officers by the board. KRS 312.019(9) provides that the board may employ personnel and incur expenses necessary for the performance of its duties.

Section 1. The board shall elect from its members a president,
a vice president and an executive secretary, if deemed necessary by the board, who shall perform the following duties:

1. The president shall be the chief executive of the board. The president shall preside over all meetings of the board.

2. The vice president shall perform the duties of the president during the president's absence or inability to serve. The vice president shall perform other reasonable duties delegated to him by the president or by the board.

3. The executive secretary shall, if necessary or upon the discretion of the board, perform the following duties:
   a. [Accurately] Record and present [keep in permanent form] the minutes of a meeting to [all meetings of] the board at the next scheduled meeting.
   b. Oversee the administrative functions of the board. Keep an accurate and up-to-date file of all licensees of the board, including their addresses and telephone numbers; their status as to whether or not they are in active practice or are inactive; in practice in this state or out of it; the record of attendance at educational programs; a record of all fees paid by licensees; and communicate to the board, at least once in each year, the names of licensees who are delinquent in the payment of fees or attendance of educational programs.
   c. Perform other reasonable duties delegated to the secretary or executive secretary by the president or the board. [Transmit notices for renewal of licenses as provided by KRS 312.075(2).]
   d. Transmit notice of special meetings of the board.
   e. Attend to the correspondence and communications of the board.
   f. Perform other reasonable duties delegated to him by the president or by the board.

Section 2. The board may employ a field coordinator and a secretary as a part of the regular staff of the board. The field coordinator shall be paid a salary as the board may determine from time to time. The field coordinator shall perform the following duties:

1. The field coordinator, who may be a member of the board except that the president or executive secretary, as referenced in KRS 312.055(1), shall not serve as field coordinator, shall:
   a. Investigate complaints against licensees referred to him by the board for investigation and report his findings to the board. If the field coordinator is a board member, he shall not vote on any matter relative to formal or informal complaints against any licensee when any of the charges were investigated by him in the capacity of field coordinator.
   b. Perform other reasonable duties as are delegated to him by the president or by the board.

2. The administrative staff shall perform the following duties:
   a. Keep an accurate and up-to-date file of all licensees of the board, including their addresses and telephone numbers; their status as to whether or not they are in active practice or are inactive; in practice in this state or out of it; their record of attendance at educational programs; a record of all fees paid by licensees; and communicate to the board, at least once each year, the names of licensees who are delinquent in the payment of fees or attendance of educational programs.
   b. Transmit notices for renewal of licenses as provided by KRS 312.075(2).
   c. Transmit notices of special meetings of the board.
   d. Attend to the correspondence and communications of the board.
tive regulation: Only board members elected to the offices of president, vice president, and executive secretary and staff members in the positions of administrative secretary and field coordinator, are affected by this amended administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The amended administrative regulation will assist the board members and administrative staff by clearly defining their duties and responsibilities.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation outside of occasional salary increases which may be approved by the board for the administrative secretary and the field coordinator.

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

(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 amended regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not establish any fees, nor does it directly or indirectly increase any existing fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all elected board members and administrative staff.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:031. Board meetings.

RELATES TO: KRS 312.019, 312.065
STATUTORY AUTHORITY: KRS 312.019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.065
provides for meetings of the board. The purpose of this administrative regulation is to provide for the holding of sufficient meetings to transact the business of the board; to guarantee adequate notice of meetings; and to provide for the orderly transaction of business.

Section 1. The board shall hold meetings at least annually to examine applicants and to transact business at the date, time and place as the board shall determine at a duly convened regular or special meeting of the board.

Section 2. The president of the board or a majority of its members may, for necessary or appropriate cause, call special meetings.

Section 3. Notice of all meetings of the board shall be given to all board members. The notice shall be in writing and shall state the date, time, and place of the meeting and meet all requirements of the Kentucky Open Meetings Law.

Section 4. Three (3) members shall constitute a quorum for the transaction of business by the board. Regular meetings of the board shall be held at regular intervals at the date, time and place as the board shall determine at a duly convened regular or special meeting of the board.

Section 5. The president of the board or a majority of its members may, for necessary or appropriate cause, call other meetings.

Section 6. Reasonable notice of all special meetings of the board shall be given to all board members. The notice shall be in writing and shall state the date, time and place of the meeting. Twenty (20) days prior notice shall be reasonable. Any regular or special meeting may be adjourned to another date, time and place without the necessity of further notice.

Section 5. Three (3) members shall constitute a quorum for the transaction of business by the board. Regular meetings of the board may adjourn a meeting from time to time until a quorum is present without the necessity of further notice if the original notice was sufficient in the case of special meetings.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 9 a.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides for the orderly transaction of the board's business.
(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that the Kentucky Board of Chiropractic Examiners conducts meetings in a manner which conforms with the Kentucky Open Meetings Law and properly transacts necessary board business.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations to ensure regulation of licenses.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which board meetings are called which will provide for the orderly transaction of business.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the manner in which board meetings are called and will ensure the orderly transaction of board business.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the manner in which board meetings are called and evidence compliance with the Kentucky Open Meetings Law.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the
content of the authorizing statute by setting forth the notice and quorum provisions for calling both regular and special meetings.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the manner in which board meetings are called and should ensure the orderly transaction of board business. It will also affect the number and type of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly impacts the five members of the board appointed by the Governor and the board’s administrative staff.

(4) Provides an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The amended administrative regulation will assist interested parties in obtaining information concerning the holding of both regularly scheduled and special-called meetings.

(5) Provides an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.
(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(7) Provides 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 amended regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all board members, board administrative staff and any member of the public who would like to attend a meeting.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:041. Licensing; renewals [standards], fees.

RELATES TO: KRS 312.085, 312.095, 312.175 [312.405, 312.415].

STATUTORY AUTHORITY: KRS 312.019.

NECESSITY, FUNCTION, AND CONFORMITY: [The statutory provisions governing applications for licenses, examination of prospective licensees, and the renewal of licenses were amended by the 1988 session of the Kentucky General Assembly.] The purpose of this administrative regulation is to [more definitively] specify the procedures relating to application for licenses, license renewal, and fees [these and other matters].

Section 1. Application Fee. At the time the application is submitted, a nonrefundable [an] application [and-examination] fee in the amount of $300 ($40.00) shall be paid to the board [executive secretary].

Section 2. Licenses. Licenses issued by the board shall forth the name of the issuing board, the name of the licensee, the number of the license, the date of its issuance, and must be signed by a minimum of three (3) members of the board and have the seal of the board affixed. All members of the board shall be given the opportunity to sign each license.

Section 3. License Renewal. (1) Each licensee of the board, whether licensed to practice in this state or out of it and whether or not he is inactive or active [retired], shall annually renew his license on or before the first day of March. He shall submit his application for license renewal to the executive secretary on the forms provided by the board for such purpose. With the application, a licensee seeking active status shall pay a [the] renewal fee of $200. An inactive licensee shall pay a renewal fee of sixty (60) dollars.

(2) The educational program shall meet one (1) or more of the following minimum requirements:
(a) A post graduate course of study at or sponsored by a chiropractic college accredited by the Council on Chiropractic Education or its successors, of at least twelve (12) hours of instruction only [six] (6) hours of which may be obtained out-of-state over at least two (2) days; or
(b) An educational program approved by the board, or a committee designated by the board to act between sessions of the board, with a total of at least twelve (12) hours of instruction over at least two (2) days. To be considered, the educational program shall be sponsored by a national or state chartered organization of chiropractors open to all doctors of chiropractic in Kentucky who desire to attend. The instructors and speakers shall be recognized to have a national reputation in the field of chiropractic education or allied sciences or they shall be generally recognized as having a high degree of skill in the field of instruction [in which he instructs]. The programs to be presented must contain subjects that will be of significant benefit to licensees and on a postgraduate level of education.

(3) The sponsoring party of a proposed educational program for license renewal shall apply for approval of the program prior to its presentation by providing the following information to the board [executive secretary]:
(a) The name of the course;
(b) The name of the sponsoring organization;
(c) The objective of the program;
(d) The number of hours over which the educational program will be presented and the dates presented;
(e) The names of the instructors and speakers and the name and address of the institution with which they are associated, if applicable;
(f) The instructors' or speakers' educational background and other relevant qualifications;
(g) The name and address of the person authorized to certify attendance.

(4) The educational program may be monitored by an officer of the board, the field coordinator of the board, or a person designated by the president of the board for such purpose.

(5) Any proposed program shall be submitted to the [executive secretary of the] board for approval at least sixty (60) days prior to the date of the presentation. The board, or a designee of [committee designated by] the board to act between meetings of the board, shall give written notification of the board's approval or disapproval of the program to the sponsoring party not less than thirty (30) days after receiving the proposed educational program. Within thirty (30) days of completion of the program, the sponsoring party shall submit to the board [executive secretary] a written certification of the licensees in attendance at the program, the sessions attended by each and the number of hours of each session attended.

(6) If the licensees is in active practice but is not in active practice in this state and does not intend to practice in this state during the renewal period, he shall meet the educational requirements of the state or jurisdiction in which he is practicing; shall affirm that such requirements have been met; and shall furnish proof of compliance if requested by the board [or by the executive secretary].

(7) If the licensee is not in active practice, his license may be renewed, with such inactive status being noted, without satisfying the educational requirements but before such licensee may again be licensed to engage in the active practice of chiropractic, he shall meet the educational requirements prescribed by the board after a review of the licensee's verified resume of education and experience and shall satisfactorily pass such examination for clinical competency as may be prescribed by the board.

Section 4. Change of Address. Each licensee shall notify the board [executive secretary] within thirty (30) days of each change of mailing address or place of business.

Section 5. Incorporation by Reference. (1) The following mete-
(a) "New Licensee Application", (2006),
(b) "Application for Annual License Renewal", (2006); and
(c) "Annual Inactive/Non-Resident License Renewal Application".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42142, Monday through Friday, 8 a.m. to 4:30 p.m. [Fees: The fee for examinations is $100.

Section 6. Application and renewal forms are incorporated by reference. Forms may be obtained at, or by written request mailed to, the office of the board, 214 South Green Street, Glasgow, Kentucky 42142.]

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 9:30 a.m. local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 163, Glasgow, Kentucky 42142, phone (270) 651-2252, fax (270) 651-6784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation specifies the procedures relating to application for licensure, license renewal, and fees for practitioners of chiropractic in the Commonwealth of Kentucky.
(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that applicants are placed on notice as to the proper procedures and fees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations to ensure regulation of applicants for licensure and to set fees.
(d) How the administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which applicants apply for licensure and licensees renew their licenses.
(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 amended administrative regulation updates the manner in which applicants apply for licensure and licensees renew their licenses.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the manner in which application is made to the board for new licenses and for renewal.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting forth the procedures and fees for application and renewal thereby placing the public on notice.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the manner in which applications are made to the board and licensees are renewed which will reduce the amount of time the board's staff spends answering these basic questions.
(3) List the type and number of individuals, businesses, organizations, or state and local governmental affected by this administrative regulation: This administrative directly impacts the approximately 65 annual licensure applicants and 791 licensees in the Commonwealth of Kentucky.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist interested parties in obtaining information concerning the application for licensure and renewal of licensure by clarifying the procedure as well as the cost.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.
(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees.
(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 amended regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not increase any existing fees for licensure and renewal.
(9) TIERING: Is tiering applied? Tiering was applied. Licensees who are renewing active licenses are charged more money than licensees with inactive licenses as they are making money by actively practicing chiropractic with those licenses.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners (Amendment)

201 KAR 21:045. Specialties.

RELATES TO: KRS 312.019, 312.021
STATUTORY AUTHORITY: KRS 312.012, 312.021
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.021
provides that the board shall identify by administrative regulation those specialties of chiropractic for which certification may be granted and shall establish by administrative regulation the procedure for obtaining and maintaining certification and the fees therefor. The purpose of this administrative regulation is to carry out that legislative direction.

Section 1. Specialty Designations. Specialty designation shall be granted to disciplines where the applicant has successfully completed and passed a minimum 300-hour course from a chiropractic college or university accredited by the Council on Chiropractic Education. A licensee shall not hold himself out as a specialist until such time as he applies for and is approved for certification pursuant to this administrative regulation. Any advertisement which states that a licensee has special training or skills, or is certified in a specialty not recognized by the board, is engaged in deceptive and misleading advertising practices and may be subject to disciplinary action by the board.

Section 2. Specialist in Chiropractic Orthopedics. A licensee, who is in active practice and in good standing with the board, who applies to the board and pays the fee provided for in Section 7 of this administrative regulation, shall be certified as a specialist in chiropractic orthopedics, if he holds certified active or diploma
Section 3. Specialist In Diagnostic Imaging. A licensee, who is in active practice and in good standing with the board, who applies to the board and pays the fee provided for in Section 7 of this administrative regulation, shall be certified as a specialist in diagnostic imaging if he holds diplomate status in good standing with the American Chiropractic Board of Diagnostic Imaging or meets equivalent standards.

Section 4. Specialist in Chiropractic Neurology. A licensee, who is in active practice and in good standing with the board, who completes the appropriate application and submits it to the board and pays the fee provided in Section 7 of this administrative regulation, shall be certified as a specialist in chiropractic neurology if he holds diplomate status in good standing with the American Chiropractic Association and the American Chiropractic Association Council on Neurology or meets equivalent standards.

Section 5. Specialist in Chiropractic Pediatrics. A licensee, who is in active practice and in good standing with the board, who applies to the board and pays the fee provided for in Section 7 of this administrative regulation, shall be certified as a specialist in chiropractic pediatrics if he holds diplomate status in good standing with the International Chiropractic Association Council on Chiropractic Pediatrics or meets equivalent standards.

Section 6. Applications. The applicant for certified status under Section 2, 3, 4, or 5 of this administrative regulation shall submit with his application proof of current status with the American Board of Chiropractic Orthopedists, the American Board of Diagnostic Imaging, the American Chiropractic Association Council on Neurology, or the International Chiropractic Association Council on Chiropractic Pediatrics, or proof of current status with an entity meeting equivalent standards. Certification by the board shall be for a stated period of time not exceeding one (1) year.

Section 7. Specialty Designations Fees. The board may charge reasonable fees for certification of specialties. The fees shall be $500 for initial certification of each specialty and $250 for annual renewal.

Section 8. Advertising Specialty Designations. A licensee certified as a specialist in accordance with Section 2, 3, 4, or 5 of this administrative regulation may advertise his certification. Advertising specialty designations shall be conducted in accordance with the standards set forth in 201 KAR 21:065.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42142, Monday through Friday, 8 a.m. to 5:30 p.m. (A licensee who is in active practice and is in good standing with the board who applies to the board and pays the fee provided for in Section 7 of this administrative regulation shall be certified as a specialist in chiropractic orthopedics if he holds diplomate status with the American Board of Chiropractic Orthopedists or meets equivalent standards.

Section 2. A licensee who is in active practice and in good standing with the board who applies to the board and pays the fee provided for in Section 4 of the administrative regulation shall be certified as a specialist in roentgenology if he holds diplomate status with the American Chiropractic Board of Roentgenology or meets equivalent standards.

Section 3. The applicant for certified status under either Section 1 or 2 of this administrative regulation shall submit with his application proof of current status with the American Board of Chiropractic Orthopedists or the American Chiropractic Board of Roentgenology or proof of meeting equivalent standards. Certification by the board shall be for a stated period of time not exceeding one (1) year.

Section 4. The board may charge reasonable fees for certification of specialties. The fees currently charged by the board are $100 for certification of each specialty and thirty (30) dollars for annual renewal.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LTC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 10 a.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, 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 March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation identifies specialties of chiropractic for which certification is granted by the board.
(b) The necessity of this administrative regulation: The necessity of this regulation is to set forth the procedures for obtaining and maintaining specialty certification in the practice of chiropractic in Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to identify by administrative regulation those specialties of chiropractic and establish procedures for obtaining and maintaining specialty certification.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation updates the list of specialty certifications for the practice of chiropractic in the Commonwealth of Kentucky and thus is in keeping with a duty given to the board by the legislature.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates and expands the types of specialty designations granted certification by the board.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and expand the list of specialties granted certification by the board and the manner in which they may be obtained, thereby notifying licensees of the requirements.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by identifying the specialties granted certification by the board and setting forth the procedures for obtaining and maintaining those certifications.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation updates and thus clearly sets forth the comprehensive list of specialties granted certification for those practicing chiropractic in the Commonwealth of Kentucky.
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Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 791 licensed doctors of chiropractic in the Commonwealth of Kentucky. It is unknown at this time how many will apply for and qualify for the specialty designation. Currently, there are 4 doctors of chiropractic with specialty designations granted by the board.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist interested parties by providing information to obtain specialty designation in the practice of chiropractic in Kentucky.

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

(a) Initially: No additional cost is forecast for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is forecast on a continuing basis for the implementation of this administrative regulation.

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

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation directly increases the existing fees for chiropractors who wish to obtain a specialty designation – that is for the certification of a specialty and for specialty renewal. However, it should be noted that this is voluntary and not required for the practice of chiropractic generally in the Commonwealth of Kentucky. It does not impact the basic fee to obtain a license to practice chiropractic in the state of Kentucky. Only those who wish to obtain a specialty designation in addition to their chiropractic licenses are impacted by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied as all applicants for specialty designations will be charged the same fee.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)


RELATES TO: KRS 312.150, 312.155, 312.160
STATUTORY AUTHORITY: KRS 312.019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.150 to 312.160 provides for the suspension or revocation of licenses by the board following a hearing. The purpose of this administrative regulation is to establish procedural guidelines for board hearings and the processing of [formal- or informal-charges-or] complaints against licensees.

Section 1. Definitions. As used in this administrative regulation:

1. "Complaint" means an allegation alleging misconduct that might constitute a violation of KRS Chapter 312 or the administrative regulations promulgated thereunder.

2. "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of a notice and complaint. Order means the whole or part of any final disposition of the adjudication of a complaint before the board.

"Sanction" means the revocation or suspension of a license.

Section 2. Complaints and Investigations. (1) A formal complaint may be made by any person, organization or entity. A com-

plaint made by a person, organization, or entity shall be in writing and shall be signed by the person offering the complaint [by filing with the board at board office a complaint verified by affidavit]. The complaint shall contain:

(a) The name, phone number, [place of residence] and address of the person making the charge and the name and address of the place of business [registered] of the person or persons against whom charges are made.

(b) A clear and concise description of the issues of fact [and law involved] and the statutes or administrative regulations which were allegedly violated by the party against whom the complaint is brought.

(2) Upon receipt of a [formal] complaint against a licensee, the board shall send a copy of the complaint to the licensee for a response within twenty (20) days from the date of the board's letter. The complaint shall be sent to the last known address of the licensee that the board has on file. The board shall review the complaint and the licensee's response before it determines whether the nature and quality of the charges warrant dismissal, further investigation or the initiation of a hearing [proceedure on the charges against the licensee]. In making its determination, the board shall consider whether the charges if proven would warrant sanction by the board.

(3) The board may at any time proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its own investigation.

(4) Whether charges are intimated against a licensee by a [formal] complaint or on the board's own motion, no formal charge shall be brought against a licensee except upon the affirmative vote of a majority of the board.

(a) If the board finds that allegations against a licensee are insufficient for [the] intimation of a formal disciplinary procedure, it shall dismiss [issue an order-dismissing] the matter and notify [cause] all interested parties [to be advised].

(b) If the board determines that disciplinary proceedings are appropriate, the board shall set the matter for hearing at a future meeting of the board and shall notify the licensee of the charges against him and the time and place of the hearing. The notice shall set forth with reasonable particularity the facts constituting the alleged offense and shall state the statutes or administrative regulations of the board which are applicable to the charge. The notice of the charges shall be served upon the respondent licensee not less than twenty (20) days prior to the hearing either personally or by mailing a copy thereof by certified mail, return receipt requested to the respondent licensee's address last known to the board. The board is also entitled to resolve the matter informally through mediation or negotiation. Any hearing order reached through mediation or negotiation shall be approved by the board and signed by the individual who is the subject of the complaint, the individual's attorney, and the chair of the board.

Section 3. (1) The hearing shall be held in accordance with KRS Chapter 13B [conducted pursuant to this administrative regulation shall be presided over by the president of the board-who shall be advised on legal issues by counsel-designated by the board].

(2) The respondent may be entitled to a reasonable continuance of the hearing date, for good cause, as recommended to the board by the hearing officer [appear in person and be counsel and may cross examine witnesses against him and produce evidence and witnesses in his own behalf and examine evidence and documents as may be produced against him]. The respondent shall be entitled on application to the board to the issuance of subpoenas pursuant to KRS 312.160, to compel the attendance of witnesses and evidence on his behalf. Any person compelled to appear at the hearing is entitled to representation by counsel.

(3) The board shall keep a record of the [said] hearing [containing all communications regarding the charges against the respondent's license]. The record shall be available to the respondent or his authorized representative. The hearing shall be mechanically or stenographically recorded.

(4) The rules of evidence as applied in civil cases in the circuit courts of the Commonwealth of Kentucky need not be strictly fol-
lowered. It is the board’s intention to permit full development of all relevant issues. Irrelevant, immaterial or unduly repetitious evidence may be excluded. The board shall give effect to the rules of privilege which are recognized by the laws of the Commonwealth of Kentucky.

(5) When a hearing will be expedited and the interests of the parties will not be prejudiced substantially thereby, all or part of the evidence may be received in written form upon agreement of the parties. Documentary evidence may be introduced in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original.

(6) Notice may be taken of:
(a) Judically recognizable facts;
(b) Generally recognized technical or scientific facts within the board’s specific knowledge. Parties shall be afforded an opportunity to contest facts noticed.

(7) If necessary to ascertain facts which cannot be proved, evidence not admissible under the foregoing rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

(8) Objections to evidence offered in proof may be made. The hearing [presiding] officer shall determine whether evidence objected to should be received and considered by the board in reaching its decision. All objections and the ruling of the hearing [presiding] officer on each objection shall be noted in the record.

(9) The board shall consider all the evidence in the record in reaching its decision. Ancillary matters not in evidence shall not be considered by the board. [The vote of the board shall be taken by the president and] It shall take a majority of the board to sustain the charges against the respondent licensee. The hearing officer shall issue a recommended order pursuant to KRS Chapter 13B which the board will consider before issuing a final order. [Board shall adopt findings of fact and conclusions of law. The board shall issue its order and shall either dismiss the action against the respondent licensee or sustain one or all of the charges.] If the board sustains some or all of the charges, the board shall by majority vote establish the sanction under law which it deems warranted. The order of the board shall be mailed to the respondent [and his authorized representative] by certified mail, return receipt requested.

Section 4. The respondent [whose license has been revoked or suspended] may within thirty (30) days of receipt of the order appeal to the Franklin Circuit Court. In the absence of such appeal, the order of the board shall be final at the expiration of the thirty (30) day period.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 10:30 a.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, 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 March 31, 2006. 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: Beverly K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Beverly K. White, Board Administrator

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides for the suspension or revocation of license by the board following an administrative hearing.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish procedural guidelines for board hearings in accordance with KRS Chapter 13B, and the processing of complaints against licensees.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations regulating the practice of chiropractic in this state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the manner in which hearings will be conducted, thus placing licensees on notice of the procedures to be followed.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the manner in which board hearings are conducted.
(b) The necessity of the amendment to this administrative regulation: The amendment to the current administrative regulation is necessary to update and clarify the manner in which board hearings are held thus providing licensees with a better understanding of the administrative process.
(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by setting forth how a complaint may be filed, the records to be kept by the board, and the procedures for holding an administrative hearing. It also provides an opportunity for the parties to resolve complaints via mediation or negotiation.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the manner in which board hearings are held and should ensure the orderly transaction of board business.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 791 licensed doctors of chiropractic in the Commonwealth of Kentucky who would be governed by the administrative hearings procedures set forth in this administrative regulation.
(4) Provide an assessment of how the above groups or other groups will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist interested parties in obtaining information concerning the procedures for filing complaints and holding administrative hearings.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.
(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by licensees.
(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 amended regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly or indirectly increase any existing fees or establish any fees.
(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees who are the subject of a complaint.
GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:055. Colleges and universities; accreditation, approval.

RELATES TO: KRS 312.019, 312.085
STATUTORY AUTHORITY: KRS 312.019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019 provides that the board shall pass upon the qualifications of applicants for a license. KRS 312.085 provides that each applicant shall be a graduate of a chiropractic college or university which maintains a standard and reputeably approved by the board. The purpose of this administrative regulation is to delineate the characteristics of institutions which are approved by the board.

Section 1. A person who makes application to the board to practice chiropractic shall be a graduate of a chiropractic college or university which is accredited as required by KRS 312.085. In addition to accreditation, the chiropractic college or university shall offer courses of instruction in anatomy, physiology, hygiene, and have a physical plant and facility which are approved by the board. The following minimum standards shall apply:

(1) The chiropractic college or university shall have well stated goals and purposes to prepare the doctor of chiropractic as a competent health care provider, well-educated to diagnose and treat his patients and to render the augmentative treatment provided for by KRS 312.015. It shall have a course of study, an administration, teaching staff, a physical plant and facility capable of achieving these objectives.

(2) The chiropractic college or university shall offer courses of instruction to teach and train its graduates as doctors of chiropractic to diagnose and treat their patients and to render augmentative care. Courses offered shall include anatomy, physiology, pathology, radiology, hygiene, chemistry, chiropractic orthopedics, diagnoses, and effects of x-rays and chiropractic principles and practices. It shall require for graduation completion the amount and quality of classroom instruction, laboratory and clinical experience required of chiropractic colleges or universities by the Council on Chiropractic Education. The college or university shall also offer courses of continuing education on a postgraduate level.

(3) Seventy-five (75) percent of the members of the full-time faculty of the chiropractic college or university shall hold graduate degrees in the field of chiropractic or graduate degrees in the allied field in which they teach. A course for which credit is given shall be taught by a person who holds a degree in chiropractic or in the allied field in which he teaches.

(4) The chiropractic college or university shall have exclusive possession of buildings adequate to accommodate the student body, faculty and administration, with classrooms, laboratories, library, research facilities and offices. The plant, grounds, equipment and facilities shall be maintained in a safe, sanitary, efficient and attractive condition. The chiropractic college or university shall fully comply with all applicable statutes, administrative regulations, ordinances and codes pertaining to health and safety.

Section 2. Each chiropractic college or university shall engage in a comprehensive, active and ongoing self-evaluation program conducted by representatives from its administration, faculty and student body. A report of such evaluation shall be made at least annually and copies of such report shall be submitted to the board from the college or university upon written request of the board through its executive secretary. The college or university shall also submit upon written request by the board a catalog and supplemental materials and information sufficient to advise the board of the courses offered and the instructors thereof; the faculty and staff of the college or university; the courses they teach and the duties they perform, their education, attainment, professional memberships and professional positions held by them; the physical plant of the college or university, including the number and size of buildings, classrooms, libraries, laboratories, offices and clinic; the extent of laboratory training and clinical experience available to its students; the books and materials available in its library; the number of students at each level of educational attainment; the calendar of the college or university showing the beginning and ending dates of its terms, the vacation periods, the holidays observed, and the examination periods; and such other information as may be requested by the board to assist it in evaluating the college or university and its ability to produce graduates qualified to diagnose and treat patients as doctors of chiropractic.

Section 3. The board and any designees of the board shall have the right to inspect and observe any aspect of the educational program, plant and facilities of any chiropractic college or university which has a graduate or graduates to apply to be licensed by the board. Upon request of the college or university, the board shall designate an inspection team consisting of not more than five (5) members to inspect the college or university and to observe operations and to report its observations to the board with respect to the manner in which the college or university is complying with the standards set forth or alluded to in this administrative regulation. The expenses of such inspection team and reasonable compensation for members of the inspection team who are not members of the board shall be paid by the requesting college or university.

MAKIK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD:
A public hearing on this administrative regulation shall be held on March 30, 2006, at 11 a.m., local time at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, 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 the 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 March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-6784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person. Beverley K. White, Board Administrator

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the characteristics of institutions which are approved by the board.
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the characteristics of institutions approved by the board.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to pass upon the qualifications of applications for licensure. Each applicant must be a graduate of a school which maintains standards approved by the board. This administrative regulation delineates the characteristics of institutions approved by the board.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the characteristics of institutions approved by the board, thus placing applicants on notice of the requirements necessary for licensure.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation.
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regulation: This amended administrative regulation updates the types of approved institutions by adding universities to the list.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the types of approved institutions.

(c) How the amendment conforms to the content of the authorizing statute: This regulation conforms to the content of the authorizing statute by clarifying the types of institutions from which applicants may graduate.

(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will clearly define the types of institutions from which applicants are eligible for licensure.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the approximately 65 applicants for licensure received annually as well as the 17 chiropractic colleges in the United States.

(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 amended administrative regulation will assist interested parties in obtaining information concerning the approved institutions for the study of chiropractic.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(h) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by a board fee increase.

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

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

(k) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all institutions preparing students for the practice of chiropractic.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(AMENDMENT)

201 KAR 21:050. Clinics; offices.

RELATES TO: KRS 312.019
STATUTORY AUTHORITY: KRS 312 019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(5) provides that the board shall regulate the practice of chiropractic by persons licensed or certified by it. KRS 312.019(9)(d) provides that the board may adopt administrative regulations pertaining to the operations and registration of chiropractic clinics. The purpose of this administrative regulation is to delineate professional standards for chiropractic offices and chiropractic clinics.

Section 1. (1) A licensee shall maintain a chiropractic office in which he receives, diagnoses and treats his patients and maintains their records. Any number of licensees may jointly maintain a chiropractic office.

(2) A chiropractic office shall include a reception room, a toilet, washing facilities and a treatment room containing equipment ordinarily necessary to provide chiropractic services.

Section 2. (1) Two (2) or more licensees may operate a chiro-

practic clinic to render services requiring specialized skills, knowledge and educational training on the part of the chiropractic clinician and specialized physical facilities not ordinarily possessed by a chiropractor operating a chiropractic office.

(2) All chiropractic clinics shall include:

(a) A reception area;

(b) A treatment area containing equipment necessary to render chiropractic services;

(c) Toilet and washing facilities;

(d) Facilities and equipment necessary to augment adjustments;

(e) Diagnostic x-ray equipment; and

(f) A chiropractic laboratory or reasonably convenient access to the use of a chiropractic laboratory.

(3) All chiropractic clinics shall employ [one-] or more chiropractic assistants-including at least one (1) person who shall be a certified radiation operator.

(4) A licensed chiropractor shall be available at the clinic or on call and readily available at all times to render chiropractic services.

(5) All chiropractic clinics shall be certified by the board. Applications for certification shall be made to the board on forms provided by the board which shall be designed to obtain information pertaining to the personnel, facilities, equipment and services to be available at the clinic.

(6) The initial application fee for certification of a chiropractic clinic shall be $250. The annual renewal fee for a certified chiropractic clinic shall be $100.

Section 3. Incorporation by Reference. (1) "Application for Certification of a Chiropractic Clinic", (2006), is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42142; Monday through Friday, 8:00 a.m. to 4:30 p.m. [board may charge reasonable fees for certification of chiropractic clinics providing that such fees are preestablished by the board at a duly convened meeting thereof and are uniformly applied.]

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 11:30 a.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, 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 March 30, 2006. 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: Beverly K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverly K. White, Board Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the professional standards for chiropractic offices and chiropractic clinics in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: The necessity of this regulation is to ensure that all chiropractic offices and clinics in Kentucky are able to provide basic services.
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(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to regulate the practice of chiropractic by persons licensed by it and furthermore, to adopt administrative regulations pertaining to the operations and registration of chiropractic clinics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the basic standards for chiropractic offices and clinics in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the basic standards for chiropractic offices and clinics.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the basic standards which must be maintained at chiropractic offices and clinics throughout the Commonwealth of Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by delineating professional standards for chiropractic offices and clinics.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the standards to be maintained by chiropractic offices and clinics and set forth the fees to be paid.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation directly impacts the approximately 615 chiropractic offices and 0 clinics throughout the Commonwealth of Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist interested parties in obtaining information concerning the standards for maintaining chiropractic offices and clinics as well as the cost.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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 amended regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does directly increase existing fees for certification and renewal of chiropractic offices and clinics.

TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees who operate chiropractic offices and clinics.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:065. Professional advertising.

RELATES TO: KRS 312.015, 312.021, 312.991
STATUTORY AUTHORITY: KRS 312.019
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation delineates limits of permissible professional advertising with the aim of adequately informing the public but at the same time establishes limits to safeguard the public from false or misleading statements and nuisance type advertising.

Section 1. A licensee may advertise his services through any medium, as long as the advertisement is not false, deceptive, or misleading, and shall include the following:

(1) An advertisement must include the business name and address, chiropractor's name, telephone number, expiration date if any, and suitable words or letters designating the particular doctor degree held by the chiropractor. "D.C." shall designate a doctor of chiropractic. Any deviation from this requirement must first be approved by the board.

(2) Any advertisement offering a free or discounted service shall include complete notice of the right of rescission, no smaller than eight (8) point font as set forth in 201 KAR 21:065. [as authorized by this administrative regulation and not otherwise. Advertisements may not be self-laudatory or misleading, and shall be certified to the following:

(a) Name, including name of professional partnership or professional service corporation, if applicable, and name of chiropractic clinic, if applicable and licensed by the board, and names of professional associates who are licensed chiropractors;

(b) Address;

(c) Telephone number;

(d) Office hours;

(e) A statement of the type of services rendered, including, if desired, any limitation or concentration of practice;

(f) Time period in which the services would be rendered;

(g) A schedule of fees for routine chiropractic services. The fees shall be in effect for no fewer than thirty (30) days after the date advertised; and

(h) Whether credit cards or other credit arrangements are accepted.]

Section 2. [Advertisements may be by radio, television or in writing.] A written advertisement may be sent or delivered to an individual addresser only if that addresser is one (1) of a class of persons, other than a family, to whom it is also sent or delivered at or about the same time, and only if it is not prompted or precipitated by a specific event or occurrence involving or relating to the addresser or addressees as distinct from the general public. A licensee that advertises a fee for routine services and accepts the employment must perform the services for the amount advertised, and a statement to that effect shall be included in every advertisement in which a fee is listed.

Section 3. The board may request a copy of any advertisement issued by or on behalf of a licensee. The board may also require a licensee advertising chiropractic services to provide a copy of the advertisement prior to issuance or publication.

Section 4. Advertisement of Designation of Chiropractic Specialty. Advertisement of chiropractic specialties shall be set forth in 201 KAR 21:065. [A licensee advertising chiropractic services shall, contemporaneously with the publication of the advertisement, mail to the board a copy of any written advertisement, or if by radio or television, a cassette recording of the advertisement plus a typed transcription of the words spoken or stated therein. In the instance of an advertisement mailed or delivered to an individual addresser or addressees, the licensee so advertising shall, at the same time, mail to the board a copy of the communication and a list of all the persons to whom it is being or will be sent or delivered.]

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 12 p.m., local time, at the Kentucky Board of Chiropractic Examiners, 203 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who
wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2006, and 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: Beverly K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-6874.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverly K. White, Board Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation delineates limits of permissible professional advertising with the aim of adequately informing the public but at the same time establishes limits to safeguard the public from false or misleading statements and nuisance type advertising.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the standards for advertising chiropractic services in an effort to protect the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority by statute to promulgate administrative regulations regulating the forms of advertising and solicitation. This administrative regulation delineates the permissible forms and formats of advertising.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the characteristics of permissible advertising approved by the board, thus placing licensees and the public on notice of acceptable standards.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the standards for advertising chiropractic services in the Commonwealth of Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the permissible forms of advertising.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by delineating the approved standards for advertising chiropractic services in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the appropriate standards for advertising and should reduce the number of inquiries to the board as well as violations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 791 licensed doctors of chiropractic in the Commonwealth of Kentucky who wish to advertise.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist licensees by informing them of the proper standards for advertising.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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 amended regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees advertising chiropractic services.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners

(201 KAR 21:070. Licensing examination requirements.

RELATES TO: KRS 312.019(9)(b), (c), 312.115(2)
STATUTORY AUTHORITY: KRS Chapter 13A, 312.019, 312.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019 empowers the Board of Examiners to adopt administrative regulations. KRS 312.019 and 312.115 provide that the Board of Examiners may adopt administrative regulations. KRS 312.019(9)(b) and (c) provide that they may adopt administrative regulations concerning the conduct of examinations and the professional qualifications for applicants for licensure. KRS 312.115(2) provides that the examination may consist in part of the National Board Examination [Teel] of the National Board of Chiropractic Examiners. This administrative regulation, as its function, establishes those examination procedures.

Section 1. [National Board Certificate of attainment and written clinical competency examination required] (1) An applicant for licensure [and practical examination] shall hold a National Board of Chiropractic Examiners Certificate of Attainment which indicates that the applicant has passed the National Board of Chiropractic Examiners examination, parts I, II, III, and IV [and IV] and the written clinical competency examination administered by the National Board of Chiropractic Examiners.

(2) An official National Board of Chiropractic Examiners transcript of scores for parts I, II, III, and IV and the written clinical competency examination administered directly by the Kentucky Board of Chiropractic Examiners [and the practical clinical competency examination] shall be on file with the Kentucky Board of Chiropractic Examiners [board thirty (30) days prior to the board’s administration to the applicant an examination in which the applicant is required to demonstrate practical clinical competency] Official transcripts shall be requested [obtained] by the applicant to be [and sent to the Kentucky Board of Chiropractic Examiners] from the board.

(3) The state’s requirement for successful completion (passage) of all parts of the National Board of Chiropractic Examiners [written clinical competency] examination shall be the National Board of Chiropractic Examiners [a scaled score of 375 or the recommended passing score of the National Board of Chiropractic Examiners, whichever is greater. The state’s requirement for successful completion (passage) of the state practical clinical competency examination shall be the score of seventy-five (75) percent or greater].

(4) This administrative regulation shall be effective January 1, 2002 [4960].

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 12:30 p.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend.
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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 March 31, 2006. Send written notification of intent to hear at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 163, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the examination requirements for licensure.
(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the examination requirements for licensure so that applicants for licensure are placed on notice.
(c) How this administrative regulation conforms to the content of the authorizing statute: The board is given the authority to adopt administrative regulations concerning the conduct of examination and the professional qualifications for applicants for licensure. This administrative regulation establishes those exam procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation establishes the examination requirements approved by the board, thus placing applicants on notice of the requirements necessary for licensure.
(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 amended administrative regulation updates the examination requirements necessary for licensure applicants.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the examination and professional requirements which applicants for licensure to practice chiropractic in the Commonwealth of Kentucky must fulfill.
(c) How the amendment conforms to the content of the authorizing statute: This regulation conforms to the content of the authorizing statute by clarifying the sections of the national examination which applicants must successfully complete.
(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will clearly define the sections of the national examination which must be successfully completed prior to application for licensure.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 65 applicants per year.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist interested parties in obtaining information concerning the required testing for licensure as a doctor of chiropractic.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.
(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by licensees.
(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 amended regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly or indirectly increase any existing fees or establish any fees.
(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all applicants for licensure.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

RELATES TO: KRS 312.200
STATUTORY AUTHORITY: KRS Chapter 13A, 31.200, 312.015, 312.019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.010 empowers the Kentucky Board of Chiropractic Examiners to adopt administrative regulations. KRS 312.200 requires the board to appoint a peer review committee and establish procedures and fees for the review of submitted claims. The function of this administrative regulation is to establish those fees and procedures.

Section 1. Definitions. (1) "Board" means the Kentucky State Board of Chiropractic Examiners.
(2) "Committee" means the peer review committee established by KRS 312.200.
(3) "Accepted standards" for the peer review committee means those standards of care, skill, and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.
(4) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed, which by virtue of a substantiated and properly diagnosed condition appears to be a type consistent with that diagnosis as reviewed by the peer review committee.
(5) "Unconsciousness fees" means charges or bills for treatment submitted for services performed that are unnecessary or unreasonable charges in the judgment of the peer review committee. In determining the unconscionability of costs, the committee may consider, among other appropriate factors, the usual and customary charges by chiropractors and by health care providers other than chiropractors for the same or similar services in the locality where the complaint originated.
(6) "Bill for treatment" means all services provided to a customer, regardless of the monetary consideration paid to the chiropractor.
(7) "Patient" means an individual who receives treatment from a chiropractor.
(8) "Properly utilized services" means appropriate treatment services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports of the provider or any other facts or evidence pertinent to the controversy as reviewed by the peer review committee.

Section 2. Procedures. (1) Before peer review can take place, the patient shall execute a release permitting photocopies of the applicable treatment or billing records prepared by the chiropractor in the regular course of business. No treatment records shall be released for peer review without the patient’s authorization. The acceptance of, or the request for, payment by a chiropractor constitutes the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment or its cost to the peer review committee. Six (6) copies of all records or data shall be submitted to the committee.
(2) Each claim shall be assigned to an individual member of the committee who shall review the submitted records and response from the charged party and report his findings to the full committee, which shall review the findings and either adopt those

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findings or modify them as deemed appropriate by majority vote. Copies of the findings shall be forwarded to the board, the patient, the chiropractor, insurer or other third party payor.

(3) The peer review committee shall elect a chairman. The committee may recommend for the board's approval a contract with or employment of third parties to perform administrative functions or to aid in obtaining records necessary for appropriate review of claims.

(4) The peer review committee shall recommend to the board that a complaint be filed against any chiropractor if it appears from the review of any claim that reasonable cause exists to believe that the chiropractor has violated any portion of KRS Chapter 312 or the administrative regulations adopted pursuant thereto for which a chiropractor may be disciplined. The peer review committee shall transmit all complaint information it possesses to the board.

(5) Any party pursuant to KRS 312.200(2) [A chiropractor, insurer or other third party payor] requesting review shall submit with the request a service fee of $300 (fifty-five dollars) payable to "B.C.E. Peer Review." An additional fee shall be charged for claims requiring more than one (1) hour of review by the committee calculated at $300 (fifty-five dollars) per hour, which sum shall be due prior to the delivery of committee findings to all parties. All fees shall be paid by the chiropractor, insurer or other third party payor requesting the review.

Section 3. Annual Report. An annual summary of the findings of the peer review committee shall be prepared by the secretary and presented to the board. The report may be made available to interested persons upon request and upon payment of the cost of reproduction. No report or summary submitted to the public by the board may disclose the name or identity of any patient without the patient's consent.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 1 p.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, 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 shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, and 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 March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and fees for review of claims by the peer review committee.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish minimum standards for review of claims against doctors of chiropractic in an effort to protect the public.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to adopt administrative regulations, to appoint a peer review committee, and to establish procedures and fees for the review of submitted claims. This administrative regulation establishes those procedures and fees.

(d) How this administrative regulation currently assesses or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for review of claims submitted against chiropractors, thus placing licenses and the public on notice.

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

(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the procedures and fees for review by a peer committee of claims against a chiropractor.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the review procedures in an effort to place licenses on notice and protect the public.

(c) How the amendment conforms to the content of the authorizing statute: This regulation conforms to the content of the authorizing statute by clearly defining what items will be reviewed and the standards to be applied as well as the cost for conducting review by the committee.

(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will clearly define the procedures and costs for peer review.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the 701 licensed doctors of chiropractic in the Commonwealth of Kentucky and their patients who may have their claims reviewed by a peer review committee.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended administrative regulation will assist licensees and the public by making them more informed about the manner in which peer review is conducted and the standards to be applied.

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

(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

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

(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 amended regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not increase any fees for licensees as a group, only those who go through the peer review process.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all chiropractors who come before the peer review committee.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners

(Amendment)

201 KAR 21:080. Seventy-two (72) hour right of rescission.

RELATES TO: KRS 312.019(3)(g)
STATUTORY AUTHORITY: KRS Chapter 13A, 312.019(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019 empowers the Kentucky Board of Chiropractic Examiners to adopt administrative regulations concerning forms of advertising or solicitation that may be false, misleading or deceptive and to require a seventy-two (72) hour rescission period for consumers responding to certain forms of solicitation or advertising. This administrative
regulation defines the forms of solicitation or advertising wherein the responding consumer is granted a seventy-two (72) hour rescission period.

Section 1. Definitions. (1) "Advertisement of free or discounted services" means any advertisement or solicitation, [whether] by any [television, radio or print] medium, offering free or discounted examinations, consultations, treatment, goods or other services.
(2) "Seventy-two (72) hour right of rescission" means the right of a consumer to rescind within seventy-two (72) hours any agreement to pay for services that are performed the same day in addition to the advertised free or discounted service at an additional unadvertised cost, or any agreement entered into on such same date to submit to a series or course of treatments at an additional unadvertised cost.
(3) "Complete notice of right of rescission" means a conspicuous statement, of not less than eight (8) point font in any advertisement of free or discounted services substantially as follows: "You have the right to rescind within seventy-two (72) hours any obligation to pay for services performed in addition to this free or discounted service.*
(4) "Notice of rescission" means notice by the consumer rescinding any agreement to pay for unadvertised additional services performed or to be performed in addition to the free or discounted service. To be effective, the notice of rescission shall be given within seventy-two (72) hours of the completion of the advertised free or discounted service, or agreement to submit to a series or course of treatments. The notice need not take any particular form, so long as it is legible and expresses the intention of the consumer to rescind his obligation. Notice of rescission given by mail is effective when it is deposited in a mailbox properly addressed and postage prepaid.

Section 2. Consumer Rights, Notice. (1) Any chiropractor advertising free or discounted services shall in any advertisement or solicitation provide the consumer with notice of the seventy-two (72) hour right of rescission.
(2) Within ten (10) days of any notice of rescission, the chiropractor shall tender to the consumer any payment made by the consumer prior to the rescission for any unadvertised service performed. If no payment had yet been made by the consumer for unadvertised services, the consumer’s account shall not be billed for such services.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing or administrative action shall be held on March 30, 2006, at 1:30 p.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by March 23, 2006, 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 March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2822, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Beverley K. White, Board Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation defines the forms of solicitation or advertising wherein the responding consumer is granted a 72-hour rescission period.
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish rescission requirements to help consumers avoid being trapped by false, misleading, or deceptive advertising or solicitation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to adopt administrative regulations concerning forms of advertising or solicitation that may be false, misleading or deceptive and to require a 72-hour rescission period for consumers responding to certain forms of solicitation or advertising. This administrative regulation defines the forms of solicitation or advertising wherein the responding consumer is granted a 72-hour rescission period.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the 72-hour rescission requirements relative to certain types of solicitations or advertisements, thus placing licensees and the public on notice.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the 72-hour rescission requirement.
(b) The necessity of the amendment to this administrative regulation: The amendment to the current administrative regulation is necessary to update the 72-hour rescission requirement for certain types of solicitation and advertising in an effort to place licensees on notice and protect the public.
(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by clearly defining the forms of solicitation and advertising wherein the responding consumer is granted a 72-hour right of rescission.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the requirements for implementing the 72-hour right of rescission.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the 761 licensed doctors of chiropractic in the Commonwealth of Kentucky who wish to advertise free or discounted 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 amended administrative regulation will assist licensees and the public by making them more informed about the types of advertising or chiropractic services that are acceptable and the 72-hour rescission requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.
(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by licensees.
(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 amended regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation does not directly or indirectly increase any existing fees or establish any fees.
(9) TIERING: Is tiering applied? Tiering was not applied, as the criteria apply equally to all licensees who solicit or advertise their services in the Commonwealth of Kentucky.
GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

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201 KAR 21:085. Preceptorship Program.

RELATES TO: KRS 312.019(9)(b), 312.046(9)(b), 312.065(2).
STATUTORY AUTHORITY: KRS Chapter 13A, 312.019(9),
312.065(2).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019
authorizes the board to adopt administrative regulations. KRS
312.019(9)(h) and KRS 312.065(2) provide for administrative
regulations to be adopted establishing a preceptorship program
where students at accredited colleges and universities may work at
the direction and under the supervision of a licensed doctor
of chiropractic prior to graduation [taking the licensing examination].
The function of this administrative regulation is to establish that
program.

Section 1. Definitions. (1) "Preceptor" is a licensed doctor
of chiropractic, who, under approval of the board and an
accredited chiropractic college or university, has worked in his office an
undergraduate interm.
(2) "Undergraduate interm" is an individual studying at an ac-
ccredited chiropractic college or university and who is in the final
academic year prior to receiving his degree in chiropractic.
(3) "Board" means the Kentucky State Board of Chiropractic
Examiners.
(4) "Accredited chiropractic college or university" means a
chiropractic college or university accredited by the Council on Chi-
ropathic Education or its successor and which maintains a stan-
ard and reputation approved by the board. For the purposes of
this administrative regulation, the chiropractic college or university
shall meet all educational standards for preceptorship programs as
established by the Council on Chiropractic Education.

Section 2. Requirements of Preceptor. (1) Be approved by the
Kentucky State Board of Chiropractic Examiners for participation;
(2) Have a current Kentucky license which is active and in
good standing;
(3) Have been in practice for five (5) years or more in Ken-
tucky;
(4) Provide evidence of malpractice insurance for themselves
[and the interm];
(5) Be of good moral character;
(6) Not be impaired by [addicted to] alcohol or narcotics;
(7) Have not been found in violation of board rules, other than
for a minor advertising violation, for the preceding two (2) [five (5) years
and have no present investigations (including during term as
preceptor) for possible board violations;
(8) Comply and be qualified where applicable. The board will
encourage development of extension faculty designation for all
preceptors approved by the colleges or universities.

Section 3. Preceptor Relationship with College or University
and Intern. (1) The preceptor shall make a joint application to the
board and the college or university
(2) The preceptor shall arrange or confer with the college or
university representative prior to the beginning date of each sess-
ion to plan its duration, organization, and substance.
(3) When a preceptor is assigned, the preceptor shall maintain
complete records and reports of each student's performance and
provide an evaluation to the college or university on forms provided
by the college or university. As provided herein, any incident re-
ports related to the operation of the practicum education experi-
ence are to be maintained by the preceptor and are to be the sole
property of the preceptor. Upon receipt of written consent by the
college or university, board or student the preceptor shall provide
[to the college, board, or student] a copy of such report.
(4) The preceptor may request the college or university to
withdraw any student whose performance is unsatisfactory or
whose health status prevents the student's successful completion
of the practicum education assignment. A statement, in writing, of
the reasons for such action shall be provided by the preceptor to
the college or university or student upon [the college's or student's]
request.
(5) The preceptor shall not be liable for the payment of any
wages, salary or compensation of any kind for services properly
required of and performed by an intern.
(6) The preceptor shall provide the college or university with a
written code of ethics which applies to his office.
(7) The preceptor shall insure that interns are allowed to per-
form only those duties which are lawful and ethical in the practice
of chiropractic. However, the intern shall not make any final diag-
noses or perform an adjustment.
(8) The preceptor shall assume the risk of any accident or
injury to any intern while on preceptor's premises, which shall in-
clude all working areas. The preceptor shall maintain premises liability
insurance.

Section 4. Requirements of Intern. (1) The intern shall submit a
fee of $200 ($400) to the board for each semester he or she is
participating in the preceptorship program.
(2) The intern shall remain in good standing academically and
demonstrate an acceptable level of performance, both quantita-
tively and qualitatively, in the college or university outpatient clinic.
(3) The intern shall complete, sign, and submit all application
materials to the college or university clinic director for verification
and approval.
(4) The intern shall serve in the preceptorship program for a
term specified by the college or university for the purpose of aug-
menting his competence in areas of chiropractic practice.
(5) The intern shall provide both the college or university and
the preceptor with a current telephone number and address.
(6) The intern shall be responsible for following all reasonable
and lawful policies and procedures of the preceptor's office.
(7) The intern is responsible for providing and wearing profes-
sional attire.
(8) The intern shall be responsible for his own transportation
and living arrangements.
(9) The Intern shall report to the preceptor on time.
(10) The Intern shall not submit for publication any material
relating to his preceptorship without prior written approval of the
preceptor and the college or university.
(11) The Intern shall insure that biweekly reports are submitted
by the preceptor to the college or university on his activities and
progress.
(12) At the completion of the preceptorship, the Intern shall
present to the college or university clinic director [and the board]
a paper describing his experiences and summarizing the acquisi-
tion of knowledge during the preceptorship.
(13) The Intern shall provide evidence of professional liability
insurance from the college or university for the purpose of
[covering the Intern].
(14) The Intern shall respond to any inquiry by the board within
twenty (20) days [include a copy of his auto liability policy as part of
the application].

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A
public hearing on this administrative regulation shall be held on
March 30, 2006, at 2 p.m., local time, at the Kentucky Board
of Chiropractic Examiners, 209 South Green Street, Glasgow, Ken-
tucky. Individuals interested in being heard at this hearing shall
notify this agency in writing by March 23, 2006, five workdays prior
to the hearing, of their intent to attend. If no notification of intent to
attend the hearing is received by that date, the hearing may be
canceled. This hearing is open to the public. Any person who
wishes to be heard will be given an opportunity to comment on the
proposed administrative regulation. A transcript of the public 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 March 31,
2006. Send written notification of intent to be heard at the public
hearing or written comments on the proposed administrative regu-
lations to the contact person.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator
Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

(a) How wide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes a preceptorship program where students at accredited colleges may work at the direction and under the supervision of a licensed doctor of chiropractic prior to taking the licensing examination.
(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish the guidelines for the preceptorship program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The board is given the authority to adopt administrative regulations establishing a preceptorship program. This administrative regulation defines the requirements for participation in the program for both the preceptors and the interns.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for both the preceptors and the interns participating in the preceptorship program, thus placing licensees, interns and the public on notice.
(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: This amended administrative regulation updates the preceptorship program requirements.
(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the preceptorship program requirements in an effort to place licensees and interns on notice, which protects the participating parties in the public's interest.
(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms to the content of the authorizing statute by clearly defining the requirements for participating preceptors and interns in the preceptorship program.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the requirements for participating in the preceptorship program.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 5 interns applied in 2005.
(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 amended administrative regulation will assist licensees, interns and the public by making them more informed about the requirements for participating in the preceptorship program.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional cost is foreseen for the implementation of this administrative regulation.
(b) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by fees paid by licensees.
(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 will be necessary to implement this amended regulation.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation directly increases the fee paid by participating interns in the preceptorship program to $200 per semester.
(f) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees and interns who participate in the preceptorship program in the Commonwealth of Kentucky.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:05. Licensure and registration of persons performing peer review.

RELATES TO: KRS 312.200(3)
STATUTORY AUTHORITY: KRS 312.019(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the board to adopt administrative regulations. KRS 312.200(3) provides that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board approved utilization review course, annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for the licensure, review course, registration and registration fee for persons to perform these review services.

Section 1. Definitions. (1) The definition of "peer review" is governed by KRS 312.015(4).
(2) "Accepted standards" means those standards of care, skill and treatment which are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.
(3) "Appropriate chiropractic treatment" means a determination made by the treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.
(4) "Unconscionable fees" means charges or bills for treatment submitted for services performed that are unnecessary or unreasonable charges for those services. In determining the reasonableness of cost, factors to be considered would include the usual and customary charges by chiropractors for the same or similar services in the locality where the services were performed.
(5) "Bill for treatment" means a charge or bill provided to a patient, regardless of the monetary consideration paid to the chiropractor.
(6) "Patient" means an individual who receives treatment from a chiropractor.
(7) "Property utilized services" means appropriate treatment, services rendered, including frequency and duration, which are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.
(8) "Empirical data" means data which can be relied upon and capable of being verified or disproved by observation or experiment.

Section 2. Requirements for Licensure and Registration. Persons performing chiropractic peer review shall:
(1) Hold a current, active license to practice chiropractic within the Commonwealth of Kentucky that is in good standing with no outstanding complaints filed against the licensee; [and]
(2) For the first year that a person seeks to register to perform peer review, he shall have previously successfully completed a course consisting of a minimum of 100 hours in utilization peer [60-69 hours] of utilization [69] review in an independent medical examination; [from a chiropractic college accredited by the Council on Chiropractic Education; and for each year thereafter that a person seeks to register to perform peer review, he shall have completed six (6) hours of utilization review offered by a chiropractic college accredited by the Council on Chiropractic Education;[and]
(3) Register annually with the board, by June 1 of each year, by:
(a) Presenting evidence of satisfactory compliance with the requirements set out in this section and of having met the education requirements of KRS 312.175; and
(b) Paying a registration fee of $100;
(4) Personally retain a copy of all records associated with each peer review case for a minimum of seven (7) years;
(5) Employ minimum standards associated with the practice of chiropractic and comply with the code of ethical conduct set forth in 201 KAR 21:015 as follows:
(a) Through review of all relevant records, including but not limited to history, exams, reexams, diagnosis, update diagnosis,
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diagnostic imaging and testing, and standing orders of care;
(b) Reviewer’s conclusions and recommendations must be supported with empirical data and a detailed analysis and submitted simultaneously with the report in order that the licensee provider be given adequate information to appeal;
(c) All reports shall be signed by the reviewer and a copy of the peer review report shall be sent to the licensee provider being reviewed; and
(d) Derive at least fifty (50) percent of their income through actual patient services [twenty (20) dollars].

Section 3. Incorporation by Reference. (1) Registration/Renewal for Persons Performing Peer Review of Chiropractic Care in Kentucky: This regulation is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky 42142, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK WOODWARD, D.C., President
APPROVED WITH AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 2:30 p.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for licensure, review course, registration, and registration fee for persons to perform those review services.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the guidelines for the persons performing peer review.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 312.200(3) provides that persons performing peer review of chiropractic claims be licensed by the board, complete annually a board-approved utilization review course, annually register with the board and pay a registration fee. This administrative regulation establishes the requirements for licensure, review course, registration, and registration fee for persons to perform those review services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for participating in the peer review program, thus placing licensees on notice.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the peer review program requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the peer review program requirements, in an effort to place licensees and participants on notice.

(c) How the amendment conforms to the content of the authorizing statute: This regulation conforms to the content of the authorizing statute by clearly defining the requirements for participating in the peer review program.

(d) How the amendment will assist in the effective administration of the statute: This administrative regulation will clarify the requirements for the peer review program.

(e) Provide an estimate of how much it will cost to implement this administrative regulation:
(1) Initially: No additional cost is foreseen for the implementation of this administrative regulation.

(2) On a continuing basis: No additional cost is foreseen on a continuing basis for the implementation of this administrative regulation.

(f) How the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board’s operation is funded by fees paid by licensees.

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

(4) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amended administrative regulation directly increases the registration fee paid by persons registered to perform peer review to $100.

TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees who choose to participate in the peer review program in the Commonwealth of Kentucky.

GENERAL GOVERNMENT CABINET
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:100. Minimum standards for recordkeeping/verified statements.

RELATES TO: KRS 312.019(3)(j)
STATUTORY AUTHORITY: KRS Chapter 13A, 312.019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(3)(j) authorizes the board to adopt administrative regulations to establish minimum standards for recordkeeping and issuance of ramified statements. These administrative regulations establish these standards.

Section 1. Office Visits - Recordkeeping. (1) The patient’s records shall include the history, exams, reexams, diagnosis, update diagnosis, [and] standing orders or plan of care (updated as needed or at reexam), and appropriate diagnostic and imaging studies; and this information shall be legible recorded in the patient’s records and properly identified [see note].

(2) Legible documentation, whether electronically generated, computer generated, typewritten or hand written, shall record each visit, and shall include the following:
(a) Data of the visit;
(b) Patient symptoms, comment and interval history, if any;
(c) Procedures performed, if any;
(d) Additional pertinent comments, instructions, or orders; and
(e) The doctor’s name.

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Section 2. Itemized Statements. Requests for itemized statements, including dates, services and fees, shall be honored within ten (10) three (3) business days.

Section 3. Record Maintenance. All patient records shall be maintained for a minimum of seven (7) years.

MARK WOODWARD, D.C., President
APPROVED BY AGENCY: February 7, 2006
FILED WITH LRC: February 10, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2006, at 3 p.m., local time, at the Kentucky Board of Chiropractic Examiners, 209 South Green Street, Glasgow, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 23, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of Intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2006. 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: Beverley K. White, Board Administrator, Kentucky Board of Chiropractic Examiners, P.O. Box 183, Glasgow, Kentucky 42142, phone (270) 651-2522, fax (270) 651-8784.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Beverley K. White, Board Administrator

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes minimum standards for recordkeeping and issuance of itemized statements.
   (b) The necessity of this administrative regulation: The necessity of this administrative regulation is to establish minimum standards for recordkeeping and issuance of itemized statements in an effort to help patients and protect the public.
   (c) How this administrative regulation conforms to the content of the authorizing statute: The board is given the authority to adopt administrative regulations to establish minimum standards for recordkeeping and issuance of itemized statements. This administrative regulation establishes those standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amended administrative regulation updates the recordkeeping requirements and standards for issuance of itemized statements.
   (b) The necessity of the amendment to this administrative regulation: This amendment to the current administrative regulation is necessary to update and clarify the recordkeeping requirements in an effort to place licensees on notice and protect the public.
   (c) How the amendment conforms to the content of the authorizing statute: This administrative regulation conforms to the content of the authorizing statute by clearly defining the types and forms of records to be maintained and the time frame for honoring a request for an itemized statement.
   (d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will clearly define the requirements for recordkeeping and responding to requests for itemized statements.
   (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the 791 licensed doctors of chiropractors in the Commonwealth of Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The amended administrative regulation will assist licensees and the public by making them more informed about the types of records and the acceptable formats in which they may be retained as well as the requirements for responding to requests for itemized statements.

(5) Provide an estimate of how much it will 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: The board's operation is funded by fees paid by licensees.

(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 amended regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply equally to all licensees who practice chiropractic in the Commonwealth of Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(3) 201 KAR 27:05. Definitions for 201 KAR Chapter 27.
RELATES TO: KRS 229.011, 229.012, 229.031, 229.051, 229.071, 229.081, 229.091, 229.111, 229.131, 229.151, 229.171(1), 229.180(1)
STATUTORY AUTHORITY: KRS 229.171(1), 229.180(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Authority [commission] to provide the sole direction, management, control, and supervision over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held or given within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. This administrative regulation establishes the definitions used in this chapter.

Section 1. Definitions. (1) "Authority" is defined in KRS 229.011(2)
(2) "Battle royal" means more than two (2) contestants in a boxing, kickboxing, mixed martial arts, or elimination event competing in a "last man standing wins" format during a contest.
(3) The following terms shall have the meaning assigned herein:
(4) "Booth" means a single contest or exhibition in boxing, kickboxing, mixed martial arts, and elimination events pitting two (2) opponents against one another.
(5) I- (9) "Card" means a series of contests and exhibitions scheduled or occurring as part of a single program [or show] of contests and exhibitions to which a single ticket authorizes admittance, and which is under the jurisdiction of the authority [Kentucky Athletic Commission];
(5) "Chairperson" means the chairperson of the authority appointed pursuant to KRS 229.151;
(10) "Chairman" means the Chairman of the Kentucky Athletic Commission;
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(4) "Commission" means the Kentucky Athletic Commission;
(6) "Commissioner" means a member of the Kentucky Athletic Commission;
(6) "Contest" means an engagement in which the contestants [boxers, kick-boxers, or contestants in an elimination event] strive earnestly in good faith to win, and in which the contestants are judged and a winner determined;
(7) "Contestant" means any person participating in boxing, wrestling, mixed martial arts, elimination event, [event] or kickboxing [match,] shows [or exhibitions] coming under the jurisdiction of the authority, [Kentucky Athletic Commission];
(8) "Elimination event" means a boxing show where the winner of each match continues to box against additional opponents in a tournament format until an overall winner is determined;
(9) "Executive director" means the officer appointed by the governor to oversee the operations of the authority;
(10) "Inspector" means an authority employee assigned to inspect professional shows coming under the jurisdiction of the authority;[1]
(11) [(49)] "Judge" means an official, other than referee, licensed and approved by the authority to score contests and have [Kentucky Athletic Commission other than a referee, who shall have] a vote in determining the winner of any contest;[2]
(12) [ ] "Kickboxing" means a boxing show where the participants are allowed to throw kicking or foot blows at the opponent in addition to regular punching with the hands;[3]
(13) "Manager" means a single contest or elimination in wrestling pitting two or more individuals against each other;
(14) "Mixed martial arts" means any form of unarmed combat, not otherwise defined or individually regulated under 201 KAR Chapter 27, and in which participants are compensated. Mixed martial arts may include elements of boxing, kickboxing, wrestling, and other martial arts;
(15) [(19)] "License" means the written authority to engage in the business of conducting, holding, giving or affiliating at, or participating in boxing, wrestling, elimination events or kickboxing matches, shows or exhibitions;
(16) "Manager" means any person, including an agent, managing, handling, booking, directing, or in any other way directly or indirectly acting for or with a contestant in obtaining and participating in any match, show or exhibition, whether for compensation or not;
(17) "Matchmaker" or "Booker" means any person, including an agent, who brings together professional boxers, kick-boxers, or wrestlers or arranges professional boxing contests or wrestling matches or shows;
(18) "Medical examination" includes all physical, mental and psychological examinations;
(19) "Officer" means any announcer, judge, physician, referee, or timekeeper[4];
(20) "Permit" means written permission for a licensee to engage in conduct, hold, or give a professional boxing, wrestling, elimination event or kickboxing match, show or exhibition at a specific date and time and at a specific place;
(21) "Physician" means an individual licensed in any state to engage in the practice of medicine and surgery;
(22) [(41)] "Professional" is defined by KRS 229.011(5);[5]
(23) "Promoter" means any individual, corporation, association, partnership or club who has been issued a license to promote and conduct professional boxing, wrestling, mixed martial arts, elimination event, [event] or kickboxing [match] shows [or exhibitions] within the Commonwealth and who is responsible for who oversers the arranging, organizing, matchmaking, and booking of a show,[6]
(24) [(41)] "Second" means any person aiding, assisting or advising a contestant during a show [boxing or kickboxing match, or exhibition];
(25) [(29)] "Show" means any organized grouping of boxing, kickboxing, mixed martial arts, wrestling, or elimination event contests [boxing matches, wrestling matches, elimination event matches or kickboxing matches] or exhibitions coming under the jurisdiction of the Kentucky Boxing and Wrestling Authority, [Kentucky Athletic Commission];
(26) [(29)] "Sparring" means practice boxing, in which a boxer receives, lands or attempts to land blows from or on another person as part of practice or training exercises,[7] and
(27) [(29)] "Trainer" means any person who participates in the training of any contestant, provided that the training occurs within this Commonwealth.
(28) "Wrestling event staff" means anyone other than a wrestler or referee permitted to be inside the six (6) foot barrier around the ring during a wrestling event.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16th, 2006, 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 at the hearing 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 March 31st, 2006. Said 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(2) (a) What this administrative regulation does: This regulation sets forth the definitions of terms used in 201 KAR Chapter 27.
(3) (b) The necessity of this administrative regulation: This regulation is necessary to define precisely the terms used most frequently in 201 KAR Chapter 27.
(4) (c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180 authorizes the Authority to promulgate regulations necessary for the performance of its functions as set forth in KRS Chapter 229. This administrative regulation assists in the interpretation of the terms used in other regulations governing boxing and wrestling.
(5) (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Same as in (1)(b) above.
(6) (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(7) (a) How the amendment will change this existing administrative regulation: It amends and updates the previous regulation by adding new terms and amending existing terms to be used in 201 KAR Chapter 27.
(8) (b) The necessity of the amendment to this administrative regulation: Amendment of this administrative regulation is necessary to ensure that certain key terms in the other remaining administrative regulations in 201 KAR Chapter 27 are defined and interpreted properly.
(9) (c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 authorizes the Authority to promulgate regulations necessary for the performance of its functions as set forth in KRS Chapter 229. The amendment to this administrative regulation assists in the interpretation of the terms.
used in other regulations governing boxing and wrestling.

d) How the amendment will assist in the effective administration of the statutes: This amendment will update and make more precise the meaning of various terms used in the regulation of boxing and the other contact sports regulated under KRS Chapter 229.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All of the regulated community will be affected by the amendments of the definitions. Most significantly, mixed martial arts athletes and competitions will be brought under the authority of the Kentucky Boxing and Wrestling 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: This amendment will clarify definitions and make it easier for members of the regulated community to determine the meaning of these defined terms.

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

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not increase fees or require extra funding for implementation.

(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 or directly or indirectly increase any fees. By bringing mixed martial arts contests under the authority of the Kentucky Boxing and Wrestling Authority, participants in those events will be required to obtain licenses at a cost of $20 per license.

(9) TIERING: Is tiering applied? These administrative regulations set forth different sets of guidelines and rules for different official and participants in the sports regulated under KRS Chapter 229 (for example, contest officials, physicians, judges, ushers, etc.). The regulations do not, however, employ tiering among members of the same class, as there is no reason to make distinctions among individuals within the same class.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Amendment)

201 KAR 27:007. Powers and duties delegated to an executive director [a commissioner], inspector, or employee of the authority [commission].

RELATES TO: KRS 229.171, 229.190, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.171(1), 229.180(1)

[229.080]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) gives the authority [commission] the sole direction, management, control and jurisdiction over all professional boxing, sparring, and wrestling shows to be held or conducted in the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. In order to appropriately manage and control these activities, at the site of the show, it is necessary for the authority [commission] to delegate the powers granted pursuant to KRS Chapter 229 to the executive director, an inspector [a commissioner] or employee of the authority [commission]. This administrative regulation provides for the delegation of these powers.

Section 1. The executive director [chairman] shall assign himself, an inspector [another commissioner], or an employee of the authority [commission] to monitor each boxing, elimination event, mixed martial arts, and kick boxing showing taking place within the Commonwealth. He may assign himself, an inspector [another commissioner], or an employee of the authority [commission] to monitor wrestling shows on a periodic basis.

Section 2. The person assigned by the executive director [chairman] to monitor the show shall exercise immediate and full supervision, control, and administrative regulation of the show on behalf of the authority [commission] and shall be responsible directly to the authority [commission]. By way of illustration and without limiting thereby, the powers of the person assigned to monitor the show shall include authority:

(1) Over each contest and show [Authority over all contestants and matches], licensed or unlicensed, on the premises before, during, and after a show as to all matters relating to the show;

(2) To determine any question, dispute, protest, complaint or objection [all questions, disputes, protests, complaints, or objections] concerning the show and to enforce the determination [such determinations];

(3) To suspend the license of a contestant or other licensee, or eject or exclude from the premises or any part thereof, licensed or unlicensed persons upon reasonable belief that the contestant or person is intoxicated or under the influence of a legal or illegal drug that might create a hazard to others or hamper the contestant’s or person’s ability to participate in the show, or that a violation of KRS Chapter 229 or the administrative regulations promulgated in 201 KAR Chapter 27 has occurred;

(4) To interpret and enforce KRS Chapter 229 [the statutes] and the administrative regulations promulgated in 201 KAR Chapter 27 [thereunder] and determine all questions relating to the [the] show under the jurisdiction of the authority [commission];

(5) To issue decisions or rulings on questions relating to the show subject to the powers granted to the authority, including the power to issue a violation or stop an entire show, or any part of a show [commission];

(6) To request and receive assistance from the executive director, an inspector, an employee of the authority, an official, a licenses, or any [commissioners, employees of the commission, officials, licensees,] local or state law enforcement personnel in the investigation of possible statutory or regulatory infractions; and

(7) To conduct hearings on all questions, disputes, protests, complaints, or objections arising from the show.

Section 3. Any decision made pursuant to this administrative regulation may be appealed to the full authority [commission] in the manner prescribed in KRS 229.220.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: February 6, 2006
Filed with LRCS: February 14, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16th, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 March 31st, 2006. 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601.

- 1748 -
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the power of the executive director, or certain subordinates whom he selects, to decide disputes and enforce the provisions of KRS Chapter 229 and the administrative regulations promulgated under it during shows. The regulation also clarifies that the jurisdiction of the authority includes professional mixed martial arts shows and participants.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow the executive director to ensure that all applicable boxing and wrestling laws and regulations are complied with during shows.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180(1) authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all regulations necessary to properly perform its function to regulate the conduct of professional matches, shows, and events in the Commonwealth.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation grants the executive director and certain selected subordinates the power to conduct or supervise professional boxing, wrestling, and mixed martial arts shows in the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? The amendment updates certain terms to conform to current statutory usage (for example, changing commissioner to executive director) and clarifies that mixed martial arts shows are included in the regulatory structure.
(b) The necessity of the amendment to this administrative regulation: The amendment keeps this regulation in conformity with current statutory terminology and jurisdiction, as described in (a) immediately above.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180(1) grants the authority the power to promulgate, amend, or abrogate regulations to effectively enforce regulatory law.
(d) How the amendment will assist in the effective administration of the statutes: This amendment makes this administrative regulation conform to current statutory terminology and jurisdiction.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All participants and spectators in professional shows are subject to the power of the executive director to enforce the rules of boxing and wrestling at the shows.
(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: The rules clarify the role of the executive director, inspectors, and employees of the authority.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: Minimal
(b) On a continuing basis: Minimal
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees or funding are anticipated.
(8) State whether or not this administrative regulation establishes any fees or indirectly increases any fees: No new fees are established or increased.
(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation. It simply enumerates the powers available to the executive director to enforce the law at shows and allows the executive director to delegate these powers.
Section 3. Annual License for Professional Matches. The annual license for professional matches shall entitle the holder to conduct wrestling, boxing, elimination, or kickboxing events at any location within the Commonwealth for a period of one (1) year from the date of issuance. The fee for the annual license for professional matches shall be $300.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall have 15 days in which to submit written comments 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 March 31, 2006. 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATOR IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation increases the annual license fees for various officials for professional shows from $10 to $20.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that adequate and fair license fees are set for various participants at professional shows. The Kentucky Boxing and Wrestling Authority's operating budget is dependent upon license fees and the fees must be increased to allow the Authority to continue to effectively regulate professional shows.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180(1) authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all regulations necessary to properly implement KRS Chapter 229. KRS 229.091(1) states that every licensee shall be subject to the administrative regulations promulgated by the authority. KRS 229.071(3) grants the authority the power to establish annual license fees for licensed individuals.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure adequate funding for the Kentucky Boxing and Wrestling Authority to enable it to continue to effectively regulate professional shows within its jurisdiction.
(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? Briefly, it increases the annual license fees for certain officials from $10 dollars to $20.
(b) The necessity of the amendment to this administrative regulation: This fee increase is necessary to ensure adequate funding for the authority.
(c) How the amendment conforms to the content of the authorizing statutes: The Kentucky Boxing and Wrestling Authority is permitted by KRS 229.180(1) to amend regulations to effectively carry out its regulatory function to ensure safe and responsible professional shows in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will ensure adequate funding for the Kentucky Boxing and Wrestling Authority to enable it to continue to effectively regulate its effective professional shows within its jurisdiction.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by the administrative regulation: All of the categories of officials listed in this administrative regulation will be subject to increased license fees.

(4) Provide an assessment of how the above groups or entities will be impacted by the implementation of this administrative regulation, if new, or by the change if it is an amendment: The participants noted in the regulation will be subject to an increase in license fees from $10 dollars to $20 dollars.

(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: Minimal
(b) On a continuing basis: Minimal

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community, and can cover the costs of implementing and enforcing the administrative regulation with its current staff and funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This administrative regulation increases license fees, and this increase will allow the Kentucky Boxing and Wrestling Authority to implement and enforce this regulation and all of its other duties as well.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does increase license fees for various officials from $10 to $20 dollars per license per year.

(9) TIERING: Is tiering applied? Tiering is not applied, as the various categories of officials will be subject to the same license fee of $20 dollars per license per year.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Amendment)

201 KAR 27:012. Wrestling show requirements.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171(1), 229.180(1)

STATUTORY AUTHORITY: KRS 229.071(1), 229.091(1), 229.131(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMANCE: KRS 229.171 authorizes the authority [commission] to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held or given within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. KRS 229.071(1) authorizes the authority to grant annual licenses to applicants for participation in professional matches if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.091(1) provides that every license shall be subject to the administrative regulations promulgated by the authority. This administrative regulation establishes the requirements for wrestling shows and for participants in wrestling matches.

Section 1. The authority shall license all persons approved to participate in wrestling. All licenses shall expire on December 31 of the year in which they are issued.

Section 2. An applicant for a wrestling license shall complete and submit to the authority the form, "Application for License as a Wrestler" (206). An applicant desiring to renew a wrestling license shall complete and submit to the authority the form, "Application for
Renewal of License as a Wrestler*. (2/06). An applicant for a wrestling event staff or referee license shall complete and submit to the authority the form, "Application for License as a Wrestling Official", (2/06). A copy of the applicant's picture ID or birth certificate shall be submitted with any new application.

Section 3. The license fee for each participant shall be as follows:
1. Event staff: twenty (20) dollars
2. Referee: twenty (20) dollars
3. Wrestler: twenty (20) dollars
4. A wrestler certificate may be purchased for an additional ten (10) dollars.

Section 4. Requirements for the wrestling ring and the immediately surrounding area.
1. All matches shall be held in a four (4) sided roped ring with the following specifications:
   a. It shall not be less than fourteen (14) feet square inside the ropes;
   b. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;
   c. The floor of the ring may be elevated not more than six (6) feet above the arena floor; and
   d. It may have steps to enter the ring on two (2) sides.
2. The ring shall be formed of ropes with the following specifications:
   a. There shall be three (3) ropes extended in a triple line;
   b. The ropes shall be at least one (1) inch in diameter; and
   c. The ropes shall be wrapped in a clean, soft material and drawn taut.
3. The ropes shall be supported by ring posts that shall be:
   a. Made of metal or other strong material;
   b. Not less than three (3) inches in diameter; and
   c. At least eighteen (18) inches from the top (ropes; and
   d. Wrapped in soft clean material.
4. The ring floor shall be padded or cushioned with a clean, soft material that:
   a. Is at least one (1) inch in thickness;
   b. Extends over the edge of the platform;
   c. Is covered with canvas or a similar material stretched tightly; and
   d. Is clean, sanitary, and free from:
      1. Grit;
      2. Dirt;
      3. Resin;
      4. Blood; and
      5. Any other foreign object [as substance].
5. The ring ropes shall be attached to the ring posts by turnbuckles that are padded with a soft [vertical] pad at least six (6) inches in width.
6. The ring shall have an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all [four (4)] sides of the ring.
7. A partition, barricade, or some type of divider shall be placed between:
   a. Between the first row of spectator seats and the six (6) foot area surrounding the ring; and
   b. On both sides of the entry lane for wrestlers to enter the ring and the spectator area or, if an entry lane is not practical, all wrestlers shall be escorted to the ring by security.

Section 5. The promoter may request an alternate ring design consisting of more than four (4) equal sides provided that the square feet is not less than 256 square feet inside. This request shall be submitted in writing to the authority for approval no less than thirty (30) days before the show.

Section 6. [Section 2. Changes and Substitutions.] (1) Before the beginning of a wrestling show, all changes or substitutions in the advertised program of wrestling shall be posted at the ticket window and at the entrance to the facility

   (2) Changes or substitutions shall also be announced in the ring before commencement of the first match along with the information that any ticket holder desiring a refund based on those announced changes or substitutions shall be entitled to receive a refund before commencement of the program.

   (3) Purchasers of tickets shall be entitled, upon request by them, to a refund of the purchase price of such tickets, if the request is made before the commencement of the first match.

Section 7. [Section 3. Notification Requirement.] (1) A licensed wrestler who has made a commitment to participate in a professional match and is unable to participate, for any reason, shall notify the promoter of the inability to participate as soon as possible.

   (2) Failure to notify the promoter in a timely manner may [shall] constitute grounds for possible disciplinary action by the authority [commission].

Section 8. [Section 4. Prohibited Activities.] While participating in a professional match, a wrestler, referee [manager], promoter or wrestling event staff [seesaw] shall not:

   (1) Use, or direct another person to use, any object or tactic to intentionally cut:
      a. Himself;
      b. An opponent; or
      c. Any other participant in the show[;

   (2) Use any pyrotechnic during the show on:
      a. Another wrestler;
      b. The referee [Manager]; or
      c. Wrestling event staff [Seesaw].

   (3) Intentionally cause himself or his opponent to Bleed while participating in an exhibition or appearing at the site of a show.

   (4) No objects shall be used during a wrestling show that may cause a person to Bleed.

   (5) Use physical or verbal threat of aggression shall be directed toward any member of the audience.

Section 9. In the event that a scheduled show involves a match where blood capsules are to be used or wrestling is to take place in a substance, the promoter shall inform the authority no less than three (3) business days before the match.

Section 10. [6.] Any violation of this or any other administrative regulation that [which] results in injury to a contestant, participant or member of the audience may result in suspension, fine, or revocation of a license, at the discretion of the authority [commission].

Section 11. [7. Where-Wrestling-Must-Take-Place] All wrestling or entertainment must take place in the ring or within the designated area portion of the gym or arena. No physical activity is permitted between wrestlers, referees, or wrestling event staff [contestants or other wrestlers] in the audience or outside of the safety partition.

Section 12. [Section 8. Duty to Safeguard Premises.] All promoters shall safeguard and provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to insure to the [commission's] satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault or breach of decorum on the part of any licensee at such premises is prohibited.

Section 13. The promoter shall submit a request for a show date no less than five (5) calendar days before the requested date for approval by the authority. The request shall be made by completing and submitting to the authority the form, "Wrestling Show Notice Form", (2/06). There shall be no advertising of the event prior to approval. Upon approval by the authority, all advertisements shall include the promoter's license number.

Section 14. Within twenty-four (24) hours after the conclusion of the wrestling show, the promoter shall complete and submit to the authority the form, "Wrestling Event Report", (2/05).

Section 15. The authority may at any time request a contestant
to submit to a drug test at the contestant’s expense. The presence within a test of controlled substances, for which the contestant does not have a prescription, or refusal by the contestant to submit to the test, may result in suspension, fine, or revocation of a license at the discretion of the authority.

Section 16. Incorporation by Reference. (1) The following materials are incorporated by reference:
(a) "Application for License as a Wrestler", (206);
(b) "Application for Renewal of License as a Wrestler", (206);
(c) "Application for License as a Wrestling Official", (206);
(d) "Wrestling Show Notice Form", (206); and
(e) "Wrestling Event Report", (206).

(2) These forms may be inspected, obtained, or copied, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.
PUBLIC HEARING COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16th, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 March 31st, 2006. 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth detailed rules governing the conduct of professional wrestling events in the Commonwealth. Rules are established concerning licensing, permits, ring specifications, and the conduct of matches. A fee of $20 for an annual wrestler’s and wrestling official’s license is set forth.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that wrestling events in the Commonwealth are conducted in such a manner as to ensure the health and safety of all participants.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate administrative regulations necessary for the performance of its regulatory functions. These functions include, as set forth in KRS 229.171, the responsibility to protect the athletes who participate in events under the Authority’s jurisdiction, as well as to provide the professional staff necessary to properly regulate those events.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth in detail the rules governing the conduct of participants at professional wrestling events taking place in the Commonwealth.

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(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? The amendment will add provisions establishing a $20 license fee, allowing rings with more than 4 sides to be requested and approved, requiring a request for a show date to be made at least 5 days in advance, and allowing for drug tests.
(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to ensure safety in wrestling and to establish a fee to allow the Kentucky Boxing and Wrestling Authority to continue to regulate events in an effective manner.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate and amend administrative regulations necessary for the performance of its regulatory functions.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will update wrestling regulations and fees to allow for effective regulation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed athletes who participate in wrestling events, and the officials who regulate those events, will be impacted by this administrative regulation.
(f) 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: The licensed participants at elimination events will be subject to requirements concerning specifications, rules of conduct in wrestling matches, a twenty (20) dollar annual wrestling license and wrestling official license and other matters designed to ensure these events are conducted in a safe and fair manner.
(g) Provide an estimate of how much it will cost to implement this regulation:
(h) Initial: Minimal
(i) On a continuing basis: Minimal
(j) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Boxing and Wrestling Authority is funded by the regulated community.
(k) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new funding will be required to implement this administrative regulation. The license fee set forth in this administrative regulation of $20 for wrestlers and wrestling officials will enable the Kentucky Boxing and Wrestling Authority to continue to regulate wrestling in an effective manner.
(l) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation establishes a $20 annual license fee for wrestlers and wrestling officials.
(m) TIERING: Tiering is not used in this administrative regulation, as there is no basis on which to discriminate between members within the class of wrestlers and wrestling officials.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Amendment)

201 KAR 27:020. Tickets.

RELATES TO: KRS 229.031, 229.041, 229.180(1)
STATUTORY AUTHORITY: KRS 229.031(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.031(1) imposes a tax of five (5) percent upon the gross receipts collected by a person conducting an event under the jurisdiction of the authority. KRS 229.041 permits the authority to inspect a person’s books to ensure compliance with the tax. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. This ad-
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Administrative regulation sets forth rules and procedures governing the sale of tickets to events and shows in the Commonwealth. As a means to ensure the state receives its five (5) percent tax of the gross receipts from the sale of all tickets to a show or exhibition, an administrative regulation is required to govern and control the sale of each ticket. KRS 229.180 states that in order to provide more uniformity, the General Assembly intends the commission to have wider discretion than that ordinarily possessed by administrative agencies.

Section 1. Any person (all persons) admitted to any show or exhibition, except for a member of employees of the authority, an employee of the licensed promoter, an official, a representative of the press, or a contestant, members of the commission, employees of the commission, employees of the licensed promoter, officials, representatives of the press, and contestants shall be required to have a ticket. No cash may be accepted for admission by any representative of the promoter except the properly authorized ticket selling agent. Any official, employee, or member of the authority (all officials, employees, or members of the commission) shall be admitted to any professional show or exhibition upon showing the appropriate identification card.

Section 2. Any order for all admission tickets purchased, printed, sold, given away or used by a club shall be submitted in writing to the authority (commission) upon specific request of the authority (commission).

Section 3. All orders for admission tickets shall [specify]:
(1) Designate a different color for each price class of admission ticket;
(2) Specify that admission tickets [be] be numbered in consecutive order for each price class ticket; and
(3) Include a verified invoice delivered by the printer for each order of tickets printed and delivered to the promoter.

Section 4. A complimentary admission ticket (complimentary ticket) shall be [of a color-and-character as to make-them] readily distinguishable from a paid admission ticket [ticket]. The authority (commission) may limit the number, or otherwise restrict the use of complimentary admission [the] tickets and may require the payment of taxes on tickets. The authority (commission) shall be entitled, upon request, to receive twelve (12) complimentary admission [reserved] tickets [upon request] clearly marked "Not For Sale" for admission to any professional boxing, kickboxing, mixed martial arts, elimination event or wrestling show or exhibition conducted within this Commonwealth.

Section 5. A schedule of ticket prices shall be posted conspicuously at the front of the ticket office and a ticket [tickets] shall not be sold for any price [prices] other than the price printed on the face of the ticket.

Section 6. [All admission tickets collected at the gate shall be deposited in a suitable lock-box.] The authority (commission) may request, pursuant to KRS 229.041, an audit of the tickets used for a show in order to validate the fees paid pursuant to KRS 229.031.

Section 7. Each purchaser of an admission ticket shall be given a stub which shall be redeemed by the promoter on presentation by the purchaser if the show does not take place as published and announced.

Christopher L. Lilly, Commissioner, Acting Executive Director
John W. Clay, Deputy Secretary
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.
PUBLIC HEARING COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Horse Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16th, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31st, 2006. 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3991

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the rules governing the sale of tickets to events under the jurisdiction of the Kentucky Boxing and Wrestling Authority.

(b) The necessity of this administrative regulation: It is necessary to closely control the sale of tickets to events in order to ensure against unlawful diversion of funds and to ensure that the 5% tax gross receipts is paid.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180(1) authorizes the Kentucky Boxing and Wrestling Authority to promulgate regulations to allow it to properly perform its regulatory functions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows the Kentucky Boxing and Wrestling Authority to monitor and control ticket sales to the public.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the language used to conform to the current statutes, and brings mixed martial arts events under the jurisdiction of the Kentucky Boxing and Wrestling Authority.

(b) The necessity of the amendment to this administrative regulation: The changes described in 2(a) above are necessary to ensure that the terminology used in this administrative regulation conforms to the statutes.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 229.180 authorizes the Authority to promulgate or amend administrative regulations necessary to implement KRS Chapter 229.

(3) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that this administrative regulation’s terminology remains current and understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all participants in, and spectators to, events under the jurisdiction of the Kentucky Boxing and Wrestling Authority. The total number is very difficult to estimate, and depends upon the number and nature of the events held in a single year.

(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’s primary effect is to bring mixed martial arts events and participants under the jurisdiction of the authority, and to govern the sale of tickets to these events.

(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initial: Minimal
(b) On a continuing basis: Minimal

(5) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated
VOLUME 32, NUMBER 9 – MARCH 1, 2006

community.
(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. Some licensing fees upon participants in shows are being increased to allow the Kentucky Boxing and Wrestling Authority to carry out its current regulatory functions. These functions include regulating ticket sales pursuant to this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not itself increase any fees.
(9) TIERTING: Is tiering applied? This administrative regulation uses tiering to a limited extent by allowing some officials and participants, as well as the press, to enter gain admission to events without paying for tickets.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(AMENDMENT)

201 KAR 27:035. SECONDS.

RELATES TO: KRS 229.171(1), 229.180(1), 229.190, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.171(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) gives the Kentucky Boxing and Wrestling Authority (Athletic Commission) the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions [boxing-shows, kick-boxing-shows, and elimination-events] held in the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. (It is therefore necessary to control the activities of some unlicensed participants in these shows.) This administrative regulation establishes the guidelines that shall be followed by persons acting as seconds.

Section 1. (1) A second [seconds] shall report to and be under the general supervision of the inspector [commissioner] or employee of the authority [commission] in attendance at the show. (2) A second [seconds] shall obey all orders of the inspector [commissioner] or employee of the authority.

Section 2. A second [seconds] shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 [governed by the law and administrative regulations of the commission].

Section 3. Any violation by a second [seconds], of the law or administrative regulations of the authority, shall be [commission may] sufficient cause for disqualification of the contestant, for whom the second acts [they act], by the referee or judges.

Section 4. A second [seconds] shall not act as managers unless so licensed.

Section 5. A second [seconds] shall not be more than three (3) in number, and only two (2) shall be allowed in the ring at the same time.

Section 6. A second [seconds] shall be equipped with a first aid kit [first-aid-kits] and the necessary supplies for proper attendance upon the second's contestant [their contestants].

Section 7. A second [seconds] shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round of a bout or match and remove [boxing-match, kick-boxing match, or elimination-event-match—removing] all equipment. None of this equipment shall be placed on the ring floor until after the bell has sounded at the end of the round or period.

Section 8. A second [seconds] shall not throw a towel or other article [foul or other articles] into the ring.

Section 9. A second [seconds] shall wear surgical gloves at all times while carrying out his or her [their] duties.

Section 10. If the inspector has reason to believe that a second has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may impose one (1) or more of the following penalties: (1) issuance of a cease and desist order to the second; (2) issuance of a notice of violation to the second; (3) suspension of the second from a show; or (4) assessment of a fine pursuant to KRS 229.991.

Section 11. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a second, the authority may impose one (1) or more of the following penalties: (1) Suspension of the license of the second pursuant to KRS 229.200; (2) Revocation of the license of the second pursuant to KRS 229.200; (3) Reprimand of the second pursuant to KRS 229.200; or (4) Assessment of a fine pursuant to KRS 229.991.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16th, 2006, five working days prior to the hearing, of their intention to attend the hearing or receipt 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 March 31, 2006. 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone: 502-564-7760, fax: 502-564-3969.

REGULATORY IMPACT ANALYSIS AND TIERTING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the guidelines to be followed by persons acting as seconds at professional match, shows and events subject to the authority of the Kentucky Boxing and Wrestling Authority.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to regulate the conduct of seconds at professional matches, shows and events subject to the authority of the Kentucky Boxing and Wrestling Authority.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180(1) authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all regulations necessary to properly perform its functions in regulating the conduct of professional matches, shows and events in the Commonwealth. This administrative regulation furthered the regulatory purpose in providing standards for the conduct of seconds.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-
regulatory function. KRS 229.081(3) provides for the licensing of managers at professional matches and bouts [boxing and kick boxing]. KRS 229.091(1) provides that every licensee shall be subject to the [authority's] administrative regulations as the authority promulgates. This administrative regulation sets forth standards governing the conduct of managers [commission's].

Section 1. A manager shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27. A manager [Manager] shall report to and be under the general supervision of the Inspector [commissioner] or employee of the authority [commission] in attendance at the show. A manager [Manager] shall be subject to any order [directive] given by the inspector [commissioner] or employee of the authority [commission].

Section 2. A manager [Manager] shall do business only with promoters, officials, and contestants who are licensed by the authority and [commission who are] in good standing. A manager [Manager] shall act as a manager [managers] in shows that have been approved by the authority [commission].

Section 3. A manager [Managers] shall not act or attempt to act for a contestant unless legally authorized to do so by the contestant.

Section 4. Copies of any written contract [contracts] between a manager and a contestant [managers and contestants] may be filed with the inspector [commissioner] or employee of the authority [commission] as evidence of the manager's authority [commission] to act on behalf of the contestant, and shall be filed if requested by the inspector [commissioner] or employee of the authority [commission].

Section 5. If the inspector has reason to believe that a manager has committed a violation of KRS Chapter 229 201 KAR Chapter 27, the inspector may impose one (1) or more of the following penalties:

1. Issuance of a cease and desist order to the manager,
2. Issuance of a notice of violation to the manager,
3. Ejection of the manager from a show, or
4. Assessment of a fine pursuant to KRS 229.991.

Section 6. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a manager, the authority may impose one (1) or more of the following penalties:

1. Suspension of the license of the manager pursuant to KRS 229 200,
2. Revocation of the license of the manager pursuant to KRS 229 200,
3. Reprimand of the manager pursuant to KRS 229 200; or
4. Assessment of a fine pursuant to KRS 229 991.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director

JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: February 6, 2006

FILED WITH LRC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 March 31, 2006. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact.
person.

CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3989.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the guidelines to be followed by managers.

(b) The necessity of this administrative regulation: This regulation is necessary to properly regulate the conduct of managers at professional matches, shows and events subject to the authority of the Kentucky Boxing and Wrestling Authority.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180(1) authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all regulations necessary to properly perform its function to regulate the conduct of professional matches, shows and events in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the rules governing the conduct of managers at professional matches, shows and events subject to regulation pursuant to KRS Chapter 229.

(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? This amendment will clarify that managers are subject to the authority of Inspectors and employees of the authority, and sets forth the penalties (fine, penalty, notice of violation, and revocation or suspension of license) to which managers are subject for violations of these administrative regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that managers are properly subject to the regulatory authority of the Kentucky Boxing and Wrestling Authority, and that necessary penalties are in place to penalize managers for violation the governing statutes and regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment proceeds from the power of the Kentucky Boxing and Wrestling Authority to promulgate, amend, and abrogate regulations necessary or expedient to the performance of its regulatory functions in ensuring that professional matches, shows, and events are conducted in a safe manner.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the authorities and penalties to which managers are subject at professional matches, shows, and events in the Commonwealth.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All managers who participate in professional matches in the Commonwealth will be governed by this administrative regulation. There are likely over 55 managers in the Commonwealth, but the total number is not large.

(3) 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 authority and penalties (fine, penalty, notice of violation, and revocation or suspension of license) to which managers are subject will be clarified by this amendment to this administrative regulation.

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

(a) Initially: Minimal, since the basic mechanisms for governing the conduct of participants at professional matches, shows and events is already in place.

(b) On a continuing basis: Minimal

(4) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(5) 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 necessary funding is anticipated.

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

(7) TIERING: Is tiering applied? This administrative regulation does not employ tiering since all managers are governed in an identical manner by the guidelines set forth in this administrative regulation. There is no reason to discriminate among managers as a class.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

Department of Public Protection
Kentucky Boxing and Wrestling Authority

(Amendment)


RELATES TO: KRS 229.081(2), 229.091(1), 229.190, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.081(2), 229.091(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KHS Chapter 229. KRS 229.081(1) provides for the licensing of judges for professional bouts [boxing, kickboxing, and elimination events]. KRS 229.091(1) provides that every licensee shall be subject to the [such] administrative regulations [as the authority promulgate] [commission prescribes]. This administrative regulation establishes the rules of conduct and duties of a judge.

Section 1. A judge [the judge] officiating at any show shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 governing boxing, kickboxing, mixed martial arts, and elimination events [the law and administrative regulations adopted by the commission] and shall be subject to any orders given by the inspector [commissioner] or employee of the authority [commission].

Section 2. At the beginning of a bout [match] the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants. At the conclusion of the bout [match] the judges shall render their decision.

Section 3. The judges shall, upon request of the referee [if requested by the referee], assist the referee in determining whether a foul has [feels have] been committed, whether each contestant is competing [the contestants are] in earnest, and whether there is collusion affecting the result of the bout [match].

Section 4. In order to become licensed [and to maintain license], a judge shall and to maintain licensure, a judge shall attend a training class [annually take and pass an examination] on KHS Chapter 229 and 201 KAR Chapter 2. The class shall be provided by the authority.

Section 5. If the inspector has reason to believe that a judge has committed a violation of KHS Chapter 229 or 201 KAR Chapter 27, the inspector may impose one (1) or more of the following penalties:

(1) Issuance of a cease and desist order to the judge;

(2) Issuance of a notice of violation to the judge;

(3) Dismissal of the judge from a show;

(4) Assessment of a fine pursuant to KRS 229.991.

Section 6. Upon the finding of a violation of KHS Chapter 229 or 201 KAR Chapter 27 by a judge, the authority may impose one (1) or more of the following penalties:

(1) Suspension of the license of the judge pursuant to KRS
amendment is also necessary to clarify the penalties available for disciplining a timekeeper if there is a violation of the authorizing statutes or administrative regulations. The amendment is also necessary to provide that training on the laws and regulations is only necessary prior to the issuance of the original license to the judge.

(c) How the amendment will assist in the content of the authorizing statutes: The amendment is promulgated under the authority given to the Kentucky Boxing and Wrestling Authority to promulgate, amend and abrogate regulations necessary or expedient to the performance of its regulatory functions in ensuring that professional bouts and elimination events are conducted in a safe manner.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the responsibilities of a judge and the penalties to which a judge is subject at any professional bout or elimination event in the Commonwealth.

(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Judges who participate in professional bouts and elimination events in Kentucky will be affected. The administrative regulation will also affect the competitors.

(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 guidelines to which the judges are subject will be clarified by the amendment to the administrative regulation. Also, the amendment clarifies the penalties to which a judge may be subjected upon a violation of the laws and regulations of the administrative regulations. The amendment clarifies that the training on the laws and regulations is only necessary prior to the original license to the judge.

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

(a) Initially: Minimal, since the basic mechanisms for governing the conduct of participants at professional bouts and elimination events are already in place.

(b) On a continuing basis: Minimal

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This administrative regulation will not cause 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 employ tiers,

TIERING: Is tiering applied? This administrative regulation does not employ tiering, since all judges are governed in an identical manner by the guidelines set forth in this administrative regulation. There is no reason to discriminate among judges as a class.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Amendment)


RELATES TO: KRS 229.171(1), 229.180(1), 229.190, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.171(1), 229.180(1)

NEECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171 gives the Kentucky Boxing and Wrestling Authority [Athletic Commission] the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions [boxing, kickboxing, and elimination events] held in the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate, amend, or abrogate administrative regulations necessary or expedient for the performance of its regulatory functions. This administrative regulation establishes the guidelines that shall be followed by persons acting as announcers [it is therefore necessary...
to control the activities of some unlicensed participants in these shows].

Section 1. The announcer officiating at any show shall be governed by the law and administrative regulations promulgated by the authority [commission], and he shall be subject to any orders given by the Inspect [commissioner] or employee of the authority [commission].

Section 2. The announcer shall have general supervision over all announcements made by the ringside or in the arena. He shall announce from the ring, the name of contestants, their weight, decisions at the end of each match or bout, and such other matters as are necessary. No person other than the official announcer shall make announcements.

Section 3. If a match or bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and the Inspect [commissioner] or employee of the authority [commission] and then shall immediately announce the decision.

Section 4. The announcer shall not enter the ring during the actual progress of a match or bout.

Section 5. If the Inspect has reason to believe that the announcer has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the Inspect may impose one (1) or more of the following penalties:
(1) Issuance of a cease and desist order to the announcer;
(2) Issuance of a notice of violation to the announcer;
(3) Election of the announcer from a show; or
(4) Assessment of a fine pursuant to KRS 229.991.

Section 6. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by an announcer, the authority may impose one (1) or more of the following penalties:
(1) Reimbursement of the announcer pursuant to KRS 229.200; or
(2) Assessment of a fine pursuant to KRS 229.991. An announcer may be ejected from a match or excluded from future matches based on a violation of these administrative regulations.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director

APPROVED BY AGENCY: February 6, 2006
FILED WITH LRIC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, 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 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 March 31 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3989.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provides a brief summary of:
(a) What administrative regulation does: This administrative regulation sets forth the guidelines to be followed by persons acting as announcers at professional matches, shows, and events subject to the authority of the Kentucky Boxing and Wrestling Authority.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to regulate the conduct of announcers at professional matches, shows, and events subject to the authority of the Kentucky Boxing and Wrestling Authority.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180(1) authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all regulations necessary to properly perform its functions in regulating the conduct of professional matches, shows, and events in the Commonwealth. This administrative regulation furthers that regulatory purpose in providing standards for the conduct of announcers.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the rules governing the conduct of announcers at professional matches, shows, and events subject to regulation under KRS Chapter 229.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will clarify that announcers are subject to the authority of Inspectors and the employees of the authority, and set forth the penalties (notice of violation, fine, license suspension or revocation, or election) to which announcers are subject for violations of the administrative regulations.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure that announcers are properly subject to the regulatory authority of the Kentucky Boxing and Wrestling Authority.
(c) How the amendment conforms to the content of the authorizing statutes: Announcer is authorized by KRS 229.180(1), which authorizes the authority to promulgate, amend, or abrogate regulations necessary or expedient for the performance of its regulatory functions in ensuring that professional matches, shows, and events are conducted in a safe manner.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the authority to which announcers are subject at professional matches, shows, and events in the Commonwealth.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All announcers who participate in professional matches, shows, and events in the Commonwealth will be governed by this administrative regulation. The number of announcers in the Commonwealth is unknown, but is certainly small.

(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 authority to govern the conduct of announcers at events and the penalties to which they are subject, will be clarified by this amendment to this administrative regulation.

(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: Minimal, since the basic mechanisms for governing the conduct of participants at professional matches, shows and events is already in place.
(b) On a continuing basis: Minimal
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(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 necessary funding is anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or increase any fees.
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(9) TIERING: Is tiering applied? This administrative regulation does not employ tiering, since all announcers are governed identically by the guidelines set forth in this administrative regulation. There is no reason to discriminate among announcers as a class.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Amendment)


RELATES TO: KRS 229.061(4), 229 091(1),229.190, 229 200, 229.991

STATUTORY AUTHORITY: KRS 223.081(4), 229.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.081(4) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.091(1) provides for the licensing of officials for professional bouts (boxing, kickboxing, and elimination events). KRS 229.091(1) provides that every licensee shall be subject to the [such] administrative regulations [as the authority promulgates [commission-prescribes]]. This administrative regulation establishes the rules of conduct for physicians.

Section 1. The physician officiating at a show shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 [the law and administrative regulations adopted by the commission]. A physician [Physician] shall be subject to any orders given by the inspector [commissioner] or employee of the authority [commission].

Section 2. The physician shall have general supervision over the physical condition of each contestant [the-contestant], and it shall be the physician's [his] duty to make a thorough physical examination of each contestant [all-contestants] at weigh-in [weighing], or within eight (8) hours prior to the time set for their entrance into the ring. The physician [He] shall deliver a written prebout physical report [written] to the inspector [commissioner] or employee of the authority [commission]. In attendance at the show, stating the physical condition of the contestant prior to the contestant's entrance into the ring on the *PreBout Examination* form (2/06).

Section 3. The physician shall take a [his] position near the ringside and shall carefully observe the physical condition of each contestant [the-contestant] during each bout [match], and [he] shall administer medical aid should any emergency arise requiring [same] medical attention.

Section 4. The physician shall prohibit any contestant whose physician reasonably believes [who] is physically unfit for competition or impaired from alcohol or a controlled substance from entering the ring, and the physician [he] shall order the referee to stop a bout or match if the physician [he] deems it [itself] necessary to prevent serious physical injury to a contestant, official, second, manager, or spectator.

Section 5. The physician shall not enter the ring except in an emergency or unless authorized to do so by the referee, the inspector [commissioner], or an employee of the authority [commission].

Section 6. The physician shall be licensed pursuant to KRS Chapter 311 as a physician.

Section 7. The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver a postbout physical report to the inspector or employee of the authority when completed on the *Postbout Examination* form (2/06).

Section 8. The physician shall remain at the event location until each competitor has left the location.

Section 9. If the inspector has reason to believe that a physician has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may impose one (1) or more of the following penalties:

1. Issuance of a cease and desist order to the physician;
2. Issuance of a notice of violation to the physician;
3. Ejection of the physician from a show;
4. Assessment of a fine pursuant to KRS 229.991.

Section 10. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a physician, the authority may impose one (1) or more of the following penalties:

1. Suspension of the license of the physician pursuant to KRS 229.200;
2. Revocation of the license of the physician pursuant to KRS 229.200;
3. Reprimand of the physician pursuant to KRS 229 200; or
4. Assessment of a fine pursuant to KRS 229.991.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

a. "PreBout Examination", (2/06); and
b. "Postbout Examination", (2/06).

(2) These forms may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601. 8 a.m. to 4:30 p.m. Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director

JOHN W. CLAY, Deputy Secretary

APPROVED BY AGENCY: February 8, 2006

FILED WITH LRC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction, at 101 S. Main Street, Suite 300, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, 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 this public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31, 2006. 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502)564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

1. Provide a brief summary of:
   a. What this administrative regulation does: This administrative regulation sets forth the guidelines to be followed by physicians.
   b. The necessity of this administrative regulation: This administrative regulation is necessary to properly regulate the conduct of physicians at professional boxing, kickboxing, mixed martial arts events, and elimination events subject to the authority of the Kentucky Boxing and Wrestling Authority.
   c. How does this administrative regulation conform to the content and purpose of this administrative regulation: KRS 229.180 authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all
regulations necessary to properly perform its function to regulate the conduct of professional boxing, kickboxing, mixed martial arts events, and elimination events in the Commonwealth.

d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth rules governing the conduct of physicians at professional boxing, kickboxing, mixed martial arts events, and elimination events subject to regulation pursuant to KRS Chapter 229.

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

(a) How the amendment will change this existing administrative regulation? This amendment is necessary to update the language to provide the correct terminology. The amendment will clarify the penalties available for disciplining a physician if there is a violation of the administrative regulations. In addition, the regulation clarifies that mixed martial arts are also governed by the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update language to provide the correct terminology. The amendment is also necessary to clarify the penalties available for disciplining a physician if there is a violation of the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is promulgated under the authority given to the Kentucky Boxing and Wrestling Authority to promulgate, amend, and abrogate regulations necessary or expedient to the performance of its regulatory functions in ensuring that professional boxing, kickboxing, mixed martial arts events, and elimination events are conducted in a safe manner.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the responsibilities of the physicians and the penalties to which physicians are subject at professional boxing, kickboxing, mixed martial arts events, and elimination events in the Commonwealth.

List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Physicians who participate in professional boxing, kickboxing, mixed martial arts events, and elimination events in Kentucky will be affected. The regulation will also affect the competitors.

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 guidelines to which the physicians are subject will be clarified by the amendment to this administrative regulation. The amendment is also necessary to clarify the penalties available for disciplining a physician if there is a violation of the authorizing statutes or administrative regulations.

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

(a) Initially: Minimal, since the basic mechanisms for governing the conduct of participants at professional boxing, kickboxing, mixed martial arts events, and elimination events is already in place.

(b) On a continuing basis: Minimal

What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not cause an increase in fees or funding.

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

TIERING: Is tiering applied? This administrative regulation does not employ tiering, since all physicians are governed in an identical manner by the guidelines set forth in this administrative regulation. There is no reason to discriminate among physicians.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(AMENDMENT)

201 KAR 27:060. Referees.

RELATES TO: KRS 229.081(5), 229.091(1), 229.190, 229.200, 229.391

STATUTORY AUTHORITY: KRS 229.081(5), 229.091(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.081 defines the authority to promulgate administrative regulations necessary to implement KRS 229.081. KRS 229.081 provides for the licensing of a referee [referees] for professional matches and bouts [boxing-kickboxing, mixed martial arts, and elimination events]. KRS 229.091(1) provides that every licensee shall be subject to the [such] administrative regulations as the authority promulgates [commission-prescribes]. This administrative regulation establishes the rules of conduct for referees.

Section 1. The referee shall be the chief official of the show, be at the show, and shall take his place in the ring, and shall have general supervision over each contestant, manager, and second [and assistant, managers, and seconds] during the entire show.

Section 2. The referee shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 concerning [any other law and administrative regulations governing boxing-kickboxing, mixed martial arts, and elimination events], and [the] referee shall be responsible for their enforcement during the entire period of a show.

Section 3. The referee shall, before starting a bout or match, ascertain from each contestant the name of the contestant's [his] chief second. The referee shall [and] hold the [said] chief second responsible for the conduct of the chief second's assistants [his assistant seconds] during the progress of the bout or match.

Section 4. The referee shall call the contestants together in the ring immediately preceding a bout or match for final instructions. During the instructional meeting, at which time each contestant shall be accompanied in the ring by the contestant's [his] chief second only.

Section 5. The referee shall inspect the person, attire, and equipment of each contestant [the contestants] and make certain that no foreign substances which are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 [contrary to the law and administrative regulations concerning the same] have been applied or used by a contestant [the contestants].

Section 6. The referee shall have the authority to stop a bout or match at any time if the referee has reasonable grounds to believe:

(1) The bout or match is [are] too one-sided;
(2) Either of the contestants is unable to protect himself from possible injury;
(3) A contestant is [the contestants are] not competing in earnest; or
(4) Collusion [he has reasonable grounds to believe that] exists between the contestants affecting the results of the contest.

Section 7. The referee shall have the authority to disqualified a contestant who commits a foul and award the decision to his opponent. The referee [He] shall immediately disqualify a contestant who commits an intentional or deliberate foul which incapacitates an opponent.

Section 8. The referee shall decide a round in favor of the contestant who has been fouled by his opponent, and the referee [he] may permit a rest period at any time not exceeding three (3) minutes.

Section 9. The referee shall not touch a contestant [the contestant]
Section 10. In order to become licensed, and to maintain his license, a referee shall attend a training class annually (and pass an examination) on KRS Chapter 229 or 201 KAR Chapter 27 (the applicable administrative regulations are administered by the commission). The class shall be provided by the authority.

Section 11. The referee shall decide all questions arising during a bout or match which are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27 (the law or the administrative regulations of the commission).

Section 12. If the inspector has reason to believe that the referee has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may impose one or more of the following penalties:
(1) Issuance of a cease and desist order to the referee;
(2) Issuance of a notice of violation to the referee;
(3) Election of the referee from a show; or
(4) Assessment of a fine pursuant to KRS 229.991.

Section 13. Upon the finding of a violation of KRS Chapter 23 or 201 KAR Chapter 27 by a referee, the authority may impose one or more of the following penalties:
(1) Suspension of the license of the referee pursuant to KRS 229.200;
(2) Revocation of the license of the referee pursuant to KRS 229.200;
(3) Revocation of the license of the referee pursuant to KRS 229.200 or;
(4) Assessment of a fine pursuant to KRS 229.991.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing Building and Construction, at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006. 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposal for this proposed 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 proposal for this proposed regulation. Written comments shall be accepted until March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposal for this proposed regulation to:
CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the guidelines to be followed by referees.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly regulate the conduct of referees at professional bouts and matches subject to the authority of the Kentucky Boxing and Wrestling Authority.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.180 authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all regulations necessary to properly perform its function to regulate the conduct of professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events in the Commonwealth.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets forth rules governing the conduct of referees at professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events subject to regulation pursuant to KRS Chapter 229.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to update the language to provide the correct terminology and to include martial arts. The amendment is also necessary to clarify the penalties available for disciplining a referee if there is a violation of the authorizing statutes or administrative regulations. In addition, the regulation clarifies that mixed martial arts are also governed by the regulation. The amendment clarifies that training on the laws and regulations is only necessary prior to issuance of the original license to the referee.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update language to provide the correct terminology and to include martial arts. The amendment is also necessary to clarify the penalties available for disciplining a referee if there is a violation of the authorizing statutes or administrative regulations. The amendment clarifies that training on the laws and regulations is only necessary prior to issuance of the original license to the referee.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment is promulgated under the authority given to the Kentucky Boxing and Wrestling Authority to promulgate, amend, and abrogate regulations necessary or expedient to the performance of its regulatory functions.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the responsibilities of the referees and the penalties to which a referee is subject at professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events in the Commonwealth.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Referees who participate in professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events in Kentucky will be affected. The regulation will also affect the competitors.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation or this administrative regulation, if new, or by the change if it is an amendment: The guidance to which the referees are subject will be clarified by the amendment to this administrative regulation. The amendment is also necessary to clarify the penalties available for disciplining a referee if there is a violation of the authorizing statutes or administrative regulations. The amendment clarifies that training on the laws and regulations is only necessary prior to issuance of the original license to the referee.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: Minimal, since the basic mechanisms for governing the conduct of participants at professional bouts and events is already in place.
(b) On a continuing basis: Minimal
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not cause 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 establish any fees or directly or indirectly increase any fees.
(9) TIERING. Is tiering applied? This administrative regulation does not employ tiering, since all referees are governed in an iden-
tical manner by the guidelines set forth in this administrative regulation. There is no reason to discriminate among referees as a class.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Amendment)

201 KAR 27:070. Timekeeper.

RELATES TO: KRS 229.081, 229.091(1), 229.190, 229.200, 229.991.

STATUTORY AUTHORITY: KRS 229.081(6), 229.091(1), 229.190(1).

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 provides for the licensing of timekeepers for professional matches and bouts [boxing, kickboxing, and elimination events]. KRS 229.091(1) provides that every license shall be subject to the authority's administrative regulations [the authority promulgates [commission-prepared]]. This administrative regulation establishes the rules of conduct for timekeepers.

Section 1. The timekeeper officiating at any show shall be licensed by the authority and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 concerning boxing, kickboxing, wrestling, mixed martial arts, and elimination events. [governed by the law and administrative regulations adopted by the commission] shall be subject to any orders given by the inspector [commissioner] or employee of the authority [commission].

Section 2. The timekeeper shall be seated [seat-himself] outside the ring near the bell and shall take the [his] cue to commence or take time out from the nod of the referee.

Section 3. The timekeeper shall be provided with a whistle and a stop watch approved by the authority [commission].

Section 4. Ten (10) seconds before the start of each round of a bout or [boxing] match, the timekeeper shall give warning to the seconds, contestants, and officials by sounding the whistle.

Section 5. The timekeeper shall indicate the starting and ending of each round of a bout [boxing-match] by striking the bell with a metal hammer.

Section 6. In the event a bout or match terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout or match.

Section 7. Ten (10) seconds prior to the end of each round, the timekeeper shall give warning to the seconds, contestants, and officials by striking a gavel three (3) times.

Section 8. If the inspector has reason to believe that the timekeeper has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may impose one (1) or more of the following penalties:

1. Issuance of a cease and desist order to the timekeeper.
2. Issuance of a notice of violation to the timekeeper.
3. Fines for the timekeeper from a show.
4. Assessment of a fine pursuant to KRS 229.991.

Section 9. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a timekeeper, the authority may impose one (1) or more of the following penalties:

1. Suspension of the license of the timekeeper pursuant to KRS 229.200.
2. Revocation of the license of the timekeeper pursuant to KRS 229.200.
3. Removal of the timekeeper pursuant to KRS 229.200.

(4) Assessment of a fine pursuant to KRS 229.991.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director

APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 am, at the Office of Housing, Building and Construction, at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7780, fax (502) 564-3669.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the guidelines to be followed by timekeepers.
(b) the necessity of this administrative regulation: This administrative regulation is necessary to properly regulate the conduct of timekeepers at professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events subject to the authority of the Kentucky Boxing and Wrestling Authority.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment is necessary to update the language to provide the correct terminology. The amendment will clarify the penalties available for disciplining a timekeeper if there is a violation of the authorizing statutes or administrative regulations. In addition, the amendment clarifies that mixed martial arts are also governed by the regulations.
(b) the necessity of the amendment to this administrative regulation: The amendment is necessary to update language to provide the correct terminology. The amendment is also necessary to clarify the penalties available for disciplining a timekeeper if there is a violation of the administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment is promulgated under the authority given to the Kentucky Boxing and Wrestling Authority to promulgate, amend, and abrogate regulations necessary or expedient to the performance of its regulatory functions in ensuring that professional boxing, kickboxing, wrestling, mixed martial arts
events, and elimination events are conducted in a safe manner.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the responsibilities of the timekeepers and the penalties to which timekeepers are subject at professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Timekeepers who participate in professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events in Kentucky will be affected. The regulation will also affect the competitors.

(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: The guidelines to which the timekeepers are subject will be clarified by the amendment to this administrative regulation. The amendment is necessary to clarify the penalties available for disciplining a timekeeper if there is a violation of the authorizing statutes or administrative regulations.

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

(a) Initially: Minimal, since the basic mechanisms for governing the conduct of participants at professional boxing, kickboxing, wrestling, mixed martial arts events, and elimination events is already in place.

(b) On a continuing basis: Minimal

(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. This administrative regulation will not cause an increase in fees or funding.

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

(9) TIERING: Is tiering applied? This administrative regulation does not employ tiering, since all timekeepers are governed in an identical manner by the guidelines set forth in this administrative regulation. There is no reason to discriminate among timekeepers as a class.

COMMERCIAL COUNCIL
Department of Fish and Wildlife Resources
(Proposal)

301 KAR 2:041. Shooting preserves and foxhound training enclosures.

RELATES TO: KRS 150.101, 150.170, 150.175, 150.180,
150.240, 150.280, 150.630, 150.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175(1)(g), 150.240(2)

NECESSITY OF LICENSE FOR NONRESIDENTS TO HUNT ON SHOOTING PRESERVES: KRS 150.175(1)(g); 150.240(2)

Section 1. Definitions. (1) "Dog training area permit" means a permit that designates an area to allow dog training and shooting of captive-reared bobwhite year round.

(2) "Housed animal" means ungulate wildlife except wild hog and javelina.

(3) "Shooting preserve" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Dog Training Area Season. (1) Captive-reared bob-

white: year round.

(2) Pheasant and chukar: year-round pursuant to 301 KAR 3.030.

Section 3. Shooting Preserve Hunting Seasons. (1) Bobwhite: August 15 through April 15.

(2) Mallard duck: year-round.

(3) Hooved animals: September 1 through May 15.

(4) Seasons for other species shall conform to those in effect where the preserve is located.

Section 4. Permits, [and] Applications, and Transfers. (1) Without first obtaining a permit from the department, a person shall not operate:

(a) A shooting preserve for birds;

(b) A dog training area; or

(c) A foxhound enclosure with field trial authorization to exempt a participant from hunting license requirements.

(2) New permits shall not be issued for shooting preserves for any hooved animals.

(3) Dog training area permits, shooting preserve permits for hooved animals in existence prior to March 8, 2002, and shooting preserve permits for birds shall be valid from July 1 through June 30 and renewable annually.

(4) An application:

(a) Shall be made on a form supplied by the department; and

(b) For a foxhound training enclosure permit shall be signed by each person having a financial interest in the preserve.

(5) The applicant for a permit shall produce evidence that he is the owner or a bona fide lessee of record of the land where he proposes to establish a shooting preserve or dog training area.

(6) A shooting preserve permit may be transferable if an existing and current permit shooting preserve is sold to a person or entity who will maintain and operate the shooting preserves.

(7) The shooting preserve permit holder who is transferring the permit shall be compliant with all provisions of the administrative regulation prior to transfer.

(8) Prior to transfer, the facility shall be inspected for compliance of this administrative regulation by a conservation officer.

(c) Prior to the authorization of a shooting preserve permit, the purchaser of the shooting preserve shall apply on a KDFWR shooting preserve transfer form, complete the form in its entirety, and shall include a plat of the shooting preserve boundary lines performed by a licensed surveyor.

(9) A transferred shooting preserve permit may be renewable each year by submitting a shooting preserve permit application on or before May 30.

(10) A transferred shooting preserve permit shall be given the same rights as the existing permitted facility at the time of transfer.

(11) A transferred shooting preserve permit shall only be valid for the land that was permitted prior to the time of the transfer and as described in the plat.

(12) An applicant for a foxhound enclosure permit shall provide evidence that he is the owner or operator of the enclosure.

(13) If the ownership or management of a foxhound training enclosure changes, the new owner or manager shall apply for a new permit.

(14) For renewal of a permit, reporting requirements as established in Section 8 of this administrative regulation shall be met for the previous year.

Section 5. Nonresident Shooting Preserve Licenses. A commercial shooting preserve operator wishing to sell nonresident shooting preserve licenses shall:

(1) Furnish the department with a surety bond in the amount of $500.

(2) At the end of each month from September through May, send the department all money received from the sale of nonresident shooting preserve licenses.

Section 6. Shooting Preserve and Dog Training Area Inspection. (1) Size requirements and posting:

(a) Shooting preserves.

1. The boundary of a shooting preserve shall be marked with
To qualify for a permit, a foxhound training enclosure shall be:
(a) At least 200 acres;
(b) Fenced to enclose foxes; and
(c) Not divided by an interior fence that restricts the range of foxes to less than 200 acres.
(2) Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:
(a) Each is at least 200 acres; and
(b) The enclosures share a common fence.
(3) The operator shall provide:
(a) Proper food, water, and shelter from inclement weather for foxes within the enclosure.
(b) At least one (1) natural or constructed den, box or hollow log per fifty (50) acres, sufficient to hold the foxes within the enclosure, preventing their capture by hounds.
(c) If a fox is held for release into an enclosure, a cage:
   1. Eight (8) feet long, four (4) feet wide and six (6) feet high;
   2. With a shelf eighteen (18) inches wide, three (3) feet high and four (4) feet long; and
   3. Containing an enclosed den box capable of housing a pair of foxes.
(4) A person shall not hold more than one (1) pair of foxes or a pair and their young less than one (1) year old per cage.

Section 11. Operations and Licensing Requirements on Foxhound Training Enclosures. (1) A person shall not intentionally engage in an activity which would cause foxhounds to injure or kill a fox in the enclosure.
(2) Fox chasing on permitted areas shall be considered an authorized field trial if a fox is not captured or killed.
(3) A person shall not take wildlife within an enclosure except under applicable administrative regulations and license requirements.
(4) An operator shall:
(a) Allow the department to inspect his facilities; and
(b) Comply with commercial pet and propagation permit requirements in obtaining and holding foxes.

Section 12. Revocation of Permits. (1) Revocation. A person convicted of a fish and wildlife violation including KRS Chapter 150, KAR Title 501, and federal wildlife laws shall have his permit revoked for a period of three (3) years.
(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Shooting Preserve Permit Application", 2006 [2004];
(b) "Application for Commercial Foxhound Training Enclosure Permit", 1998; and
(c) "Dog Training Area Permit Application", 2004; and
(d) "Shooting Preserve Permit Transfer Form", 2006.
(2) The material (these forms) may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportman's Lane [Game-Farm Road], Frankfort, Kentucky 40601, Monday through Friday from 8 a.m. to 4:30 p.m.

GEORGE WARD, Secretary
comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Executive Secretary, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
   (a) What the administrative regulation does: This administrative regulation authorizes the transfer of a shooting preserve permit. It also clearly defines the duration that the permit is valid.
   (b) The necessity of the administrative regulation: Authorizes the owner(s) of a shooting preserve to sell and transfer their operation.
   (c) How does this administrative regulation conform to the authorizing statute: KRS 150.250(2) authorizes the department to promulgate administrative regulations governing shooting preserves.
   (d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation establishes the parameters for the transfer and management of shooting preserve permits.
   (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
      (a) How the amendment will change the existing administrative regulation: The amendment authorizes the transfer of a current shooting preserve permit and clearly defines the permit's effective dates.
      (b) The necessity of the amendment to this administrative regulation: The amendment will clarify the process and procedures of a shooting preserve permit transfer and permit effective dates.
      (c) How does the amendment conform to the authorizing statutes: See "C" above.
      (d) How the amendment will assist in the effective administration of the statutes: See "D" above.
   (3) If the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 65 permitted shooting preserves in the state of Kentucky.
   (4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment. The shooting preserve operators of Kentucky will not be negatively impacted by the proposed change.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be minimal administrative cost associated with the implementation of this administrative regulation.
      (a) Initially: There will be minimal additional cost to the agency to implement this administrative regulation.
      (b) On a continuing basis: There will be minimal additional cost to the agency.
   (6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Department of Fish and Wildlife Resources, Division of Law Enforcement already oversees the enforcement of administrative regulations. The Division of Wildlife oversees the permiting process. Both divisions' current budgets will provide for the implementation and enforcement of this administrative regulation.
   (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary to increase a fee or funding to implement this administrative regulation.
   (8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees are currently set for this administrative regulation.

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:251. Hunting and trapping seasons and limits for furbears and small game.

RELATES TO: KRS 150.025(1), 150.340, 150.370(1), 150.399, 150.400, 150.410, 150 990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons and to regulate bag and possession limits, the methods of taking and the devices used to take wildlife. This administrative regulation is necessary to insure the permanent and continued supply of small game and furbear species by protecting them from overharvest.

Section 1. Definitions. (1) *Conibear-type trap* means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.
(2) *Dry land set* means a trap not set to drown an animal upon capture.
(3) *Foothold trap* means a commercially manufactured spring-loaded trap with smooth, metallic jaws that close upon an animal's foot.
(4) *Furbearers* mean mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels, river otter, bobcat, coyote and striped skunk.
(5) *Hunter* means a person hunting small game or furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.
(6) *Modern gun deer season* means the ten (10) day or sixteen (16) day period established by 301 KAR 2:172 during which hunters may take deer with breech-loading firearms.
(7) *Nonlocking snare* means a wire, cable or string loop without a device to keep the loop from loosening.
(8) *Padded trap* means a commercially manufactured foot-hold trap with metal jaws padded with a soft, nonmetallic substance.
(9) *Small game* means squirrels, rabbits, quail or grouse.
(10) *Squirrel* means gray squirrel or fox squirrel.
(11) *Water set* means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. Except as specified in 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:
(1) *Squirrel*;
(a) The first Saturday in June for fourteen (14) consecutive days.
(b) The third Saturday in August through the last day of February; and
(c) The season shall be closed during the first weekend of modern gun deer season.
(2) Rabbits and quail;
(a) Western Zone: in the first and second wildlife districts, as specified in 301 KAR 4.010, the season shall be the Monday following the opening of modern gun season until February 10.
(b) Eastern Zone: in the third through the ninth wildlife districts, as specified in 301 KAR 4.010, the season shall be November 1st until January 31. The season shall be closed during the first weekend of modern gun deer season.
(3) Grouse: the Monday after the first weekend of modern gun deer season through the last day in February in Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Hanson, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison,
VOLUME 32, NUMBER 9 — MARCH 1, 2006

Magoffin, Marin, Mason, Menfes, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Puleiski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

4. Furbearers, hunting and trapping.
   (a) Raccoon and opossum: 1. Hunting - November 1 through noon the last day of February.
   (b) Carry a firearm except a .22 caliber rimfire firearm.
   2. Trapping - noon the third day of the modern gun deer season through noon the last day of February.
   (b) River otter: Noon the third day of the modern gun deer season through noon the last day of February.
   1. Harvest zone: the following counties west of and including the main stem of the Tradewater River-Crittenden, Caldwell, Trigg, Livingston, Lyon, Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman and Fulton.
   (c) Coyote
   1. Hunting year round.
   2. Trapping: noon the third day of modern gun deer season through noon the last day of February (year round).
   (d) Bobcat: noon the third day of the modern gun deer season through January 31.
   (e) All other furbearers: noon the third day of the modern gun deer season through noon, the last day of February.
   (f) Small game and furbearers taken by falconry: September 1 through March 30.
   (g) There shall not be a closed season on:
      (a) Chasing red and gray foxes and rabbits during daylight hours for sport and not to kill; and
      (b) Chasing raccoons or opossums for sport and not to kill.
   (7) Free youth week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may take small game without a hunting license. Statewide requirements and bag limits apply.
   (8) Free youth trapping week. For seven (7) consecutive days beginning on the Saturday after Christmas, a youth may trap without a trapping license or permit. Statewide requirements and bag limits apply

Section 3. Small Game Bag and Possession Limits.

<table>
<thead>
<tr>
<th></th>
<th>Daily</th>
<th>Possession</th>
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<tbody>
<tr>
<td>Squirrels</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Rabbits</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Quail</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>Grouse</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>

Section 4. Furbearer Bag Limits. (1) There shall not be a bag limit on furbearers except bobcats and river otters.
   (2) A person shall not take more than three (3) bobcats per season.
   (3) A person shall not take more than five (5) river otters per season.

Section 5. Limits by Falconry. A falconer hunting within the falconry season but outside the dates specified in Section 2(1) through (6) of this administrative regulation shall not take more than two (2) of any small game or furbearer species, singly or in the aggregate per day.

Section 6. Shooting Hours. A person shall not take small game or furbearers by hunting except during the times specified in this section.
   (1) Small game or furbearers, except opossum and raccoon: daylight hours only.
   (2) Raccoon and opossum: day or night, except that a person shall not hunt during daylight hours during the modern gun deer season.

Section 7. Use of Calls. A hunter may use a hand- or mouth-operated call, electronic call or attracting device.

Section 8. A hunter shall not possess buckshot.

Section 9. Raccoon and Opossum Hunting Restrictions. (1) A hunter shall not use a light from a boat to take raccoon or opossum.
   (2) Except as specified in subsection (3) of this section, a person chasing raccoon or opossum from noon, March 1 through October 31 shall not use or carry a:
      (a) Firearm;
      (b) Slingshot;
      (c) Tree climber;
      (d) Squealer; or
      (e) Similar device capable of killing, injuring or forcing a raccoon or opossum from a tree or den.
   (3) A person participating in a department-approved raccoon dog trial sanctioned by one (1) of the following organizations may use a squealer:
      (a) The American Coon Hunters Association;
      (b) The American Kennel Club/American Coon Hunters Association;
      (c) The National Kennel Club;
      (d) The Professional Kennel Club;
      (e) The United Coon Hunters Association; and
      (f) The United Kennel Club.

Section 10. Trapping. (1) Except for the bag limits listed in Section 4 of this administrative regulation for river otter and bobcat, there shall not be daily or possession limit on a furbearer taken by trapping.
   (2) A person trapping on dry land shall not:
      (a) Set traps closer than ten (10) feet apart; or
      (b) Use a trap except at:
         1. Deadfall;
         2. Wire cage or box trap;
         3. Number two (2) or smaller foothold trap;
         4. Padded trap with a jaw spread of six (6) inches or less;
         5. Number 220 or smaller conibear-type trap; or
         8. Nonlocking snare.
   (3) There shall be no restrictions on a trap used as a water set.
   (4) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.
   (5) A trapper may use lights from a boat or a vehicle.

Section 11. Harvest Recording. Immediately after taking a river otter or bobcat, a person shall:
   (1) Record, in writing, the species, date taken, county where taken, and sex of the river otter or bobcat before moving the carcass from the site where taken. This information shall be logged and registered on one (1) of the following:
      (a) Hunter's log section on the reverse side of a license or permit;
      (b) Hunter's log produced in a hunting guide;
      (c) Hunter's log printed from the Internet;
      (d) Hunter's log available from any KDSS agent, or
      (e) An index card or reasonable facsimile thereof; and
   (2) Retain the completed hunter's log in his possession whenever the hunter is in the field during the current season.

Section 12. Checking a River Otter or Bobcat. (1) A person shall check a harvested river otter or bobcat by:
   (a) Calling the toll free number listed in the current fall hunting and trapping guide on the day the river otter or bobcat 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 11 of this administrative regulation.
   (2) If a harvested river otter or bobcat leaves the possession of a hunter and does not have a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag attached to it, the hunter shall attach a handmade tag, which contains the confirmation number, hunter's name, and a phone number, to the carcass.

-1766-
(3) A person shall not knowingly provide false information when completing the hunter’s log, checking a river otter or bobcat, or creating a carcass tag.

(4) A person wishing to sell a river otter or bobcat pelt to a licensed fur processor, fur buyer or for export shall call the department’s toll-free information number and request a CITES tag by providing:
(a) A valid confirmation number as described in subsection (1) of this section; and
(b) A street address where the tag is to be mailed.

(5) The CITES tag shall be attached to the skin or unskinned carcass per the instructions provided and remain with the pelt until processing.

(6) Possession of an unused CITES tag is prohibited unless authorized by the department.

Section 13. Transporting and Processing River Otter or Bobcat. (1) A person shall:
(a) Have proof that a river otter or bobcat or parts brought into Kentucky were legally taken;
(b) Not sell river otter or bobcat pelts except to a licensed:
1. Fur buyer;
2. Fur processor; or
3. Taxidermist.

(2) A taxidermist or other individual who commercially processes river otter and bobcats shall:
(a) Not accept river otter or bobcat carcasses or any part of a river otter or bobcat without a proper carcass tag or CITES tag described in Section 12 of this administrative regulation; and
(b) Keep accurate records of the hunter’s name, address, confirmation or CITES tag number, and date received for each river otter or bobcat in his possession.

Section 14. Pheasant Hunting. Dates, bag limits, and application procedures and hunting requirements are established in 301 KAR 2.045.

GEORGE WARD, Secretary
MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
APPROVED BY AGENCY: February 13, 2006
FILED WITH LRC: February 14, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2006, at 8:30 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Any business to attend prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Cara Jarrell, Assistant Counsel, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman’s Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Cara Jarrell
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes the procedures for establishing hunting seasons and regulating bag limits for small game and furbearers in Kentucky.
(b) The necessity of the administrative regulation: Ensures the permanent and continued supply of small game and furbearer species to the people of the Commonwealth.
(c) How does this administrative regulation conform to the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing hunting and trapping seasons.
(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing hunting and trapping seasons.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change the existing administrative regulation: The amendment eliminates the year round trapping of coyotes except during the furbear season.
(b) The necessity of the amendment to this administrative regulation: The amendment will reduce law enforcement issues related to the enforcement of trapping regulations and eliminate take of non-target furbearers out of season.
(c) How does the amendment conform to the authorizing statutes: See "C" above.
(d) How the amendment will assist in the effective administration of these statutes: See "D" above.
(e) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 900 trappers in the state of Kentucky.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, new, or, by the change if it is an amendment: The trappers of Kentucky will not be negatively impacted by the proposed changes.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: There will be no cost associated with the implementation of this administrative regulation.
(a) Initially: There will be no additional cost to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no additional cost to the agency.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: The current budget of the Department of Fish and Wildlife Resources Division of Law Enforcement already overserves the enforcement of administrative regulations. The Division of Wildlife oversees small game and furbearer harvest. Both divisions’ current budgets will provide for the enforcement and implementation of this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, new, or, by the change if it is an amendment: It will not be necessary to increase a fee or funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No fees.
(9) TIERING: Is tiering applied? Tiering was not used, because this administrative regulation applies equally to all trappers.

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, 435.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 435.590, 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, February 15, 2006 [December 13–2006]" are incorporated by reference. Department of Corrections Policies and Procedures include:

1. Legal Assistance for Corrections Staff (Amended 8/9/05)
2. News Media (Amended 8/9/05)
3. The Monitoring and Operation of Private Prisons (Amended 8/9/05)
4. Institutional Duty Officer (Amended 8/9/05)
5. Population Counts and Reporting Procedures (Amended 4/14/03)
6. Operation of Motor Vehicles by Department of Corrections Employees (Amended 6/30/06)
7. Innate Canteen (Amended 2/15/06 [10/4/06])
8. Wardens' Fund (Amended 10/14/05)
9. Subsistence (Amended 9/30/05)
10. Code of Ethics (Amended 9/30/05)
11. Holding of Second Jobs by Corrections' Employees (Amended 8/9/05)
13. Sex Harassment and Anti-Harassment (Amended 8/9/05)
14. Background Investigation and Employment of Ex-offenders (Amended 4/12/06)
15. Shift, Post and Days Off Assignment (Amended 8/9/05)
17. Appearances and Dress for Nonuniformed Staff (Amended 11/9/04)
18. Drug Free Workplace Employee Drug Testing (Amended 8/9/05)
19. Institutional Staff Housing (Amended 8/9/05)
20. Employee Health Issues (Added 4/12/06)
21. Employee Insurance Coverage (Amended 6/30/05)
22. Communication and Recording Devices (Amended 8/9/05)
23. Staff Sexual Misconduct (Amended 8/30/06)
24. Firearms and Chemical Agents Training (Amended 4/1/06)
25. Uniformed Employee Dress Code (Amended 6/30/06)
26. Research and Survey Projects (Amended 8/9/05)
27. Open Records Law (Amended 8/9/05)
28. E-mail and Internet Use (Amended 8/9/05)
29. Asbestos Abatement (Amended 8/9/05)
30. Fire Safety (Amended 2/15/06) (Effective 2/15/04)
31. Notification of Extraordinary Occurrence (Amended 12/13/05)
32. Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04)
33. Execution (Amended 8/9/05)
35. Contraband (Amended 12/13/05)
36. Search Policy (Amended 12/13/05)
37. Inmates (Amended 10/14/05)
38. Found Lost or Abandoned Property (Amended 10/14/05)
39. Electronic Detention Equipment (Amended 10/14/05)
40. Special Management Inmates (Amended 11/9/04)
41. Safekeepers and Contract Prisoners (Amended 9/15/04)
42. Nutritional Adequacy of Inmate Diet (Amended 8/9/05)
43. Alternative Dietary Patterns (Amended 9/30/05)
44. Pharmacy Policy and Formulary (Amended 10/14/05)
45. Health Maintenance Services (Amended 10/14/05)
46. Medical Alert System (Amended 10/14/05)
47. Advance Healthcare Directives (Added 4/12/05)
48. Sex Offender Treatment Program (Amended 8/9/05)
49. Involuntary Psychotropic Medication (Amended 10/14/05)
50. Substance Abuse Treatment Program (Effective 12/17/06)
51. Dental Services (Amended 10/14/05)
52. Serious Infectious Disease (Amended 12/13/05)
53. Do Not Resuscitate Order (Amended 8/9/05)
54. Investigation of Missing Inmate Property (Amended 10/14/05)
55. Personal Hygiene Items (Amended 10/14/05)
56. Marrow of Inmates (Amended 10/14/05)
57. Legal Services Program (Amended 2/13/04)
58. Board of Claims (Amended 10/14/05)
59. Inmate Grievance Procedure (Amended 10/14/05)
60. Sexual Abuse Prevention and Intervention Programs (Amended 10/14/05)
61. Hair, Grooming and ID Card Standards (Amended 12/13/05)
62. Rule Violations and Penalties (Amended 2/15/06 [10/4/06])
63. Meritorious Good Time (Amended 12/13/05)
64. Restoration of Forfeited Good Time (Amended 10/14/05)
65. Adjustment Procedures and Programs (Amended 10/14/05)
66. Inmate Account Restriction (Amended 12/13/05)
67. Unauthorized Substance Abuse Testing (Amended 10/14/05)
68. Inmate Visits (Amended 10/14/05)
69. Inmate Correspondence (Amended 10/14/05)
70. Inmate Access to Telephones (Amended 8/9/05)
71. Inmate Packages (Amended 8/9/05)
72. Inmate Personal Property (Amended 2/15/06 [6/30/06])
73. Assessment Center Operations (Amended 4/15/03)
74. Controlled Intake of Inmates (Amended 1/12/05)
75. Administrative Remedies: Sentence Calculations (Amended 2/13/04)
76. Classification of the Inmate (Amended 10/14/05)
77. Central Office Classification Committee (Amended 10/14/05)
78. Customer and Security Guidelines (Amended 10/14/05)
79. Transfers (Amended 10/14/05)
80. Out-of-state Transfers (Amended 2/15/06) (Effective 8/4/03)
81. Placement for Mental Health Treatment in CPTU or KCPC (Amended 2/15/06) (Effective 12/14/03)
82. Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06) (Effective 11/17/00)
83. Population Categories (Effective 8/15/01)
84. Protective Custody (Amended 1/12/05)
85. Information to the Parole Board (Effective 12/19/01)
86. Interstate Agreement on Detainers (Effective 2/17/95)
87. International Transfer of Inmates (Effective 8/15/01)
88. Governmental Services Program (Amended 2/15/06) (Effective 4/1/03)
89. Sentence Credit for Work (Added 2/13/04)
90. Inmate Wage/Time Credit Program (Amended 10/14/05)
91. Educational Programs and Educational Good Time (Amended 2/15/06) (Effective 1/4/03)
92. Privilege Trips (Amended 10/14/05)
93. Religious Programs (Amended 10/14/05)
94. Gratuities (Effective 7/28/02)
95. Public Official Notification of Release of an Inmate (Amended 10/14/05)
96. Pardon Program (Effective 7/28/02)
98. Institutional Inmate Furloughs (Amended 10/14/05)
99. Community Center Program (Effective 12/19/01)
100. Extended Furlough (Amended 4/12/05)
101. Administrative Release of Inmates (Amended 10/14/05)
102. Victim Notification (Amended 10/14/05)
103. 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: February 15, 2006
FILED WITH LRC: February 15, 2006 at 11 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hear-
VOLUME 32, NUMBER 9 – MARCH 1, 2006

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Trena C. Rogers (502) 564-2220

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky 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 196.025(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 Kentucky Department of Corrections.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Corrections employees concerning their duties and responsibilities of their jobs and to inmates concerning their 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 brings the Kentucky Department of Corrections into compliance with ACA Standards and updates current practices for the department and its facilities.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 196.025 and 197.020.
(c) How the amendment conforms to the content of the authorizing statutes: It permits the commissioner or his designated 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: The amendment provides staff and inmates information concerning the effective and orderly management of the penal institutions.
(e) 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, 9855 employees and 19501 inmates, and all visitors to state correctional institutions.
(f) Provide and 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: Staff and inmates will have to follow the changes made in the policies and procedures.

(3) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Corrections budgeted 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

(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 "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 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)
STATUTORY AUTHORITY: KRS 156.070(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(2) requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agent to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
(2) Sponsor an annual meeting of its member schools;
(3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration;
(4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
(5) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by October 31;
(6) Advise the Department of Education of all legal action brought against the KHSAA by October 31;
(7) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;
(8) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;
(9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
(10) Permit the Board of Control to assess fines on a member school;
(11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal;
(12) Establish a philosophical statement of principles to use as a guide in an eligibility case;
(13) Conduct field audits of the association's entire mem-
bership over a five (5) year period regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit summary reports including the highlighting of any deficiencies in compliance on a regular (not less than three (3) times annually) basis to the Kentucky Board of Education as requested; and
(b) As a condition precedent to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);
(14) Conduct all meetings in accordance with KRS 61.805 through 61.850; and
(15) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, bylaws, and other rules governing the conduct of interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school prior to being made public.

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:
(a) Draft budget for the next two (2) fiscal years, including the current year;
(b) End-of-year budget status report for the previous fiscal year;
(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;
(d) A summary report of operations including financial, legal and administrative summaries of actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:
   1. Athletic appeals and their disposition including the name of the individual, grade, school, and the action taken by KHSAA;
   2. Eligibility rules;
   3. Duties of school officials;
   4. Contests and contest limitations;
   5. Requirements for officials and coaches; and
   6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for vote by the member schools at the next legislative opportunity; and
   (e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.
(2) The KHSAA shall annually submit by December 31, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence, if any.

Section 4. The bylaws, tournament rules, and due process procedures of the KHSAA Handbook, Fall 2006 [2006] shall apply to high school interscholastic athletics in Kentucky.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Legal and Legislative Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: January 9, 2006
FILED WITH OCR: February 9, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 30, 2006, at 10 a.m. in the First Floor Conference Room, 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

KEVIN M. Noland, Deputy Commissioner and General Counsel, Bureau of Operations and Support Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Kevin M. Noland
(1) Provide a brief summary of:
   (a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage interscholastic athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school interscholastic athletics and incorporates by reference the bylaws, procedures, and rules governing interscholastic sports.
   (b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning, and review processes governing the agent, and to incorporate by reference the bylaws, procedures, and rules of the agent.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statutes, and outlines the conditions under which this authority is granted.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts, and publishes changes in bylaws, procedures, and rules for affected schools and districts.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: These amendments make changes to the document incorporated by reference, in KHSAA Bylaws 24, 25, 33, and 35 as adopted by the KHSAA Delegate Assembly.
   (b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the constitution and bylaws. While they are not required to make changes to the constitution and bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly.
   (c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage high school interscholastic athletics. The regulation designates the KHSAA as that agent and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, bylaws, and due process to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the bylaws are made annually, accounting for the process needed in the constitution and reflect input from member schools and districts on changes that need to be made to provide a more sound structure of governance.
   (d) How the amendment will assist in the effective administration of the statutes: See (c) above.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 176 School Districts.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KHSAA is funded through membership fees and dues, as well as from gate receipts from sporting events.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

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

(9) TIERING: Is tiering applied? TIERING was not appropriate in this administrative regulation, because the administrative regulation applies equally to all school districts.

EDUCATION CABINET
Board of Education
Department of Education
(AMENDMENT)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.310, 159.030, 159.055, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.030 establish the age for compulsory school attendance. KRS 158.060 defines the school day and month and makes up of school days missed. KRS 158.060 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year on or before May 15 of each year. The calendar shall:
   (a) Establish the opening and closing dates of the school term;
   (b) Establish beginning and ending dates of each school month;
   (c) State the number of days of instruction;
   (d) Establish the minimum length of the instructional day;
   (e) State the instructional time the local board of education requires for kindergarten if in excess of the minimum three (3) hours of instruction;
   (f) State whether the additional instructional time, if any, is planned to be made up for full days which may be missed due to an emergency; and
   (g) Designate days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

(6) An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office.

Section 2. (1) The local board of education shall file each adopted school calendar with the Department of Education no later than June 30 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education no later than June 30 of each year.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year that do not have to be made up, and that occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar.

(3) Except as provided in subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(2) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. A local board of education may request disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency. The request shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 6. (1) The following shall constitute the activities to be conducted during the instructional school day:
   (a) Courses and content included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;
   (b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305;
   (c) Co-curricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and
   (d) A maximum of five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.
The local board of education shall adopt a policy specifying curricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 7. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by taking attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), parent or legal guardian signature (for elementary students who are signed out) and other information required by the local board of education. For elementary students who are signed out, the student entry and exit log shall also include a signature of:
   (a) A parent;
   (b) A legal guardian; or
   (c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:
   (a) The pupil is a participant in a curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;
   (b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;
   (c) The pupil is participating in an off-site virtual high school class or block. A student may be counted in attendance for a virtual high school class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 4(3); [last grade for that class or block is passing or above]
   (d) The pupil's mental or physical condition prevents or renders inexcusable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;
   (e) The student has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive a minimum of one (1) hour of instruction two (2) times per five (5) instructional days; or
   (f) The student has an individual education plan (IEP) that requires less than full-time instructional services.

The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 4(2)(b) and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305, Section 4(1). A student may be counted in attendance for performance-based credit for a class or block for the year or semester in which the student initially enrolled in the class or block if the student demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 4(3).

The pupil participates in a school that is authorized by the Commissioner of Education to design and deliver an educational program so that all graduation requirements are based on student proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 4.

Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 8. (1) The guidelines in this subsection shall be used to calculate student attendance for state funding purposes through June 30, 2006.

(a) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly scheduled school day for the pupil's grade level.

(b) A tardy shall be recorded for a pupil who is absent less than thirty-five (35) percent of the regularly scheduled school day for his grade level.

(c) One half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of the regularly scheduled school day for the pupil's grade level.

(d) A full day absence shall be recorded for a pupil who is absent greater than eighty-four (84) percent of the regularly scheduled school day for his grade level.

The percentages described in this section shall apply to the regularly scheduled school day, as approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Beginning July 1, 2006, the guidelines in this subsection shall be used to calculate student attendance for state funding purposes.

(1) [aa] A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of the regularly scheduled school day for the pupil's grade level.

(2) [ab] A tardy shall be recorded for a pupil who is absent sixty (60) minutes or less of the regularly scheduled school day for the pupil's grade level.

(3) [bc] The actual percentage of the school day shall be recorded for attendance of a pupil absent for more than sixty (60) minutes of the regularly scheduled school day for the pupil's grade level.

(4) [bd] A full day absence shall be recorded for a pupil who is absent less than 100 percent of the regularly scheduled school day for the pupil's grade level.

(5) [be] The percentages described in this subsection shall apply to the regularly scheduled school day as approved by the local board of education and shall be applicable to entry level through grade level twelve (12).

Section 9. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a student is in attendance shall be included in calculating the district's average daily attendance.

Section 10. A local board of education may permit an arrangement in which a pupil pursues part of the student's education under the direction and control of one (1) public school and part of the student's education under the direction and control of another public or nonpublic school. The time a student is served by public school shall be included when calculating the district's average daily attendance.

Section 11. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 12. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the following conditions:

(a) The local board of education has determined that the stu-
dent is eligible for enrollment into the second level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of student work samples, including evidence of student self-reflection; and
3. Standardized test results.

(b) The team is comprised of three (3) members who have knowledge of the student's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists.

(c) At least one (1) team member represents the district office and has an understanding of early childhood development and knowledge of developmentally-appropriate practices; and

(d) If a student is recommended by the local board of education for accelerated placement into the second level of the primary program, the district shall forward that recommendation to the department for approval.

A list of data sources used in making the decision:

1. A list of individuals who submitted the data sources;
2. A list of team members; and
3. Data needed to create a pupil attendance record.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years of age who wishes to enroll. The days attended after the student's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 13. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8)(b) shall be submitted to the Department of Education within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

Section 14. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education no later than February 1 of the year prior to the school year to which it will apply. The written agreement shall include the specific terms to which the districts have agreed. A list of the names of all nonresident pupils enrolled in the district covered by the agreement shall be submitted to the Department of Education no later than November 1 of the school year covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education no later than June 30 of each year.

Section 15. The superintendent's annual attendance report (SAAR) shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320(17). Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 16. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, student entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 17. (1) The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils until June 30, 2006:

(a) E01—A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(b) E02—A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(c) E03—A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W06, W07, W12, W18, or W24 during the previous school year;

(d) R01—A pupil received from another home-school in the same school;

(e) R02—A pupil received from another public-school in the same public school district;

(f) R03—A pupil received from a nonpublic school in the same public school district;

(g) R04—A pupil received from a public school in Kentucky outside the public school district;

(h) R06—A pupil received from a nonpublic school in Kentucky outside the public school district;

(i) R08—A pupil reenrolling the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(j) R07—A pupil received from another state after having been previously enrolled during the current school year in Kentucky as an E01, E02, or E03;

(k) R10—An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;

(i) R11—An expelled pupil received in the current school year from a regional alternative facility not run by the expelled-school district, prior to the completion of the expulsion period;

(m) W01—A pupil transferred to another home-school in the same school. The reentry code to use with W01 shall be R01;

(n) W02—A pupil transferred to another public-school in the same public school district. The reentry code to use with W02 shall be R02;

(o) W03—A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 shall be R03;

(p) W04—A pupil transferred without change of residence, to a school outside this public school district. The reentry code to use with W04 shall be R04, R05, or R07;

(q) W05—A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 shall be R04, R06, or R07;

(r) W06—A pupil who is at least sixteen (16), but not yet eighteen (18) years of age and has dropped out. The reentry code to use with W06 shall be R06;

(s) W07—A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 602 KAR 2:030, Section (1)(a), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or homebound instructional services, or if the student has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(t) W08—A pupil withdrawn due to death;

(u) W09—A pupil who has graduated or completed a 604 plan or an individual education plan prior to the end of the school term or calendar year;

(v) W10—A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be:

1. R06, if the student returns to the expelled local school district in the current school year after the expulsion period has been
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completed, or
2. R10. If the student returns to the expelling local district in the current school year prior to completion of the expulsion period; or
3. W11-A pupil who has been expelled for behavioral reasons and withdrawn to a regional alternative facility not run by the expelling local district. The reentry code to use with W11 shall be R06;
4. R06, if the student, after the expulsion period has ended, returns during the current school year; or
5. R11, if the student returns in the current school year prior to completion of the expulsion period;
6. W12-A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06. For end of year adjustments for accountability purposes, W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
7. W13-A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07, W10, W13, W16 or W18, and has previously been reported as a drop-out for accountability purposes. The reentry code to use with W13 shall be R06;
8. W15-A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W15 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;
9. W17-An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060; and
10. W18-A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R06.

(2) Beginning—July 1, 2005) The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) [e][e] E01-A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;
(2) [b][b] E02-A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;
(3) [e][e] E03-A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew as a W06, W07, W13, W16 or W18 during the 2004-2005 school year or as a W24 or W25 for previous school years (beginning 2005-2006);
(4) [e][e] R01-A pupil received from another home room in the same school;
(5) [e][e] R02-A pupil received from another public school in the same public school district;
(6) [c][c] R06-A pupil reentering the school after dropping out, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;
(7) [g][g] R20-A pupil previously enrolled in a home school in Kentucky during the current school year;
(8) [b][b] R21-A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;
(9) [c][c] W01-A pupil transferred to another home room in the same school. The reentry code to use with W01 shall be R01;
(10) [c][c] W02-A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;
(11) [c][c] W08-A pupil withdrawn due to health;
(12) W09-A pupil who has graduated or completed a 504 plan or an individual education plan prior to the end of the school term or year;
(13) [w][w] W12-A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;
(14) [w][w] W17-An entry level student in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;
(15) [c][c] W20-A pupil transferred to a home school. The reentry code to use with W20 shall be R20;
(16) [e][e] W21-A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;
(17) [e][e] W22-A pupil who has transferred to another public school district and for whom a student record has been received or enrollment has been substantiated, or a pupil who is known to have moved out of the United States;
(18) [c][c] W25-A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;
(19) [c][c] W24-A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated;
(20) [c][c] W26-A pupil who is at least sixteen (16) years of age and has dropped out of public school;
(21) [e][e] W25-A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;
(22) [e][e] W27-A student who has withdrawn from school and subsequently received a GED.

Section 18. (1) For a student who has been suspended, a code of S shall be used to indicate the days suspended. The following suspension codes shall be used to indicate the suspension status of pupils:

(a) S—Suspension from school for one (1) full day, and
(b) N—Suspension from school for one-half (1/2) day.

(2) Suspension shall be considered an unexcused absence.

Section 19. The following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) 1-White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;
(2) 2-Black (not Hispanic) - A person having origins in any of the African racial groups designated by the United States Census Bureau, and who maintains cultural identification through tribal affiliation or community recognition; and
(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;
(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;
(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and
(6) 6 - Other.
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(a) "Growth Factor Report", June 2004;
(b) "Superintendent's Annual Attendance Report", June 2004; and
(c) "Student Dropout Questionnaire", December 2002.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Finance, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson

APPROVED BY AGENCY: January 9, 2006

FILED WITH LRC: February 9, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 30, 2006, at 10 a.m. in the First Floor Conference Room, 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 and 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 March 31, 2006. 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) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Noland

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides guidance to local school districts in the area of pupil attendance reporting.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide school districts with guidance related to pupil attendance reporting and compliance as it relates to KRS 156.070, 156.160, 157.320, 158.080, 158.070, and 158.6455.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for compliance with requirements for participation in the fund to Support Education Excellence in Kentucky as stated in KRS 157.350.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for pupil attendance recording and reporting which serves as the basis for the allocation of SEEK funds.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Amendments include: add 2 additional provisions to Section 7(4), which specify the conditions under which pupils may be counted in attendance. This change will make it possible for schools to count students in attendance when participating in performance-based credit opportunities; allow students who are not 6 years of age by October 1, but are enrolled in the second level (second year or first grade) of the primary program that meet the specified criteria to be included in the calculation of average daily attendance; remove outdated sections of the regulation; add information that was erroneously removed during the last revision to the regulation; and specify that the exit log used by schools include the signature of a (1)parent, (2)legal guardian, or (3)other adult with proper identification and authorization from a parent or legal guardian for an elementary school student who leaves school early.
(b) The necessity of the amendment to this administrative regulation: It is necessary to remove include students participating in performance-based credit in the calculation of average daily attendance in order to help schools move to a more individualized system of education where a student's progress is based on individual performance rather than being moved through the same curriculum in fixed groups. Changes to the second level age requirement are necessary to assist schools in providing developmentally appropriate instruction to students.
(c) How the amendment conforms to the content of the authorizing statute: This amendment implements the relevant statutes.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will facilitate compliance by districts by providing the necessary detailed reporting and compliance requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All 176 school districts in the state of Kentucky.
(4) Provide an assessment of how the above groups or groups within the Kentucky Education System for this administrative regulation, if new, or by the change if it is an amendment: This amendment should result in a more individualized and appropriate approach to educating students in both elementary and secondary schools in Kentucky.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no costs to the agency to implement this administrative regulation.
(b) On a continuing basis: There will be no increase in cost to the agency.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding required.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION CABINET
Board of Education
Department of Education
(Amendment)

703 KAR 5:140. Requirements for school and district report cards.

RELATES TO: KRS 156.6453
STATUTORY AUTHORITY: KRS 158.6453
NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453(7) requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance. This administrative regulation establishes the standards for a school and district report card.

Section 1. Definitions. (1) "Average student/teacher ratio" means the total enrollment of the school (end of year membership)
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defined by the number of teachers on a full-time equivalent (FTE) basis, not including administrators, guidance counselors, or media specialists.

(2) "Average years of experience" means the average number of years of professional experience of classroom teachers excluding certified staff such as administrators, guidance counselors, or media specialists.

(3) "Base year" means the academic year immediately preceding the publication of the school report card components.

(4) "Certified teacher" means a classroom teacher certified by the Education Professional Standards Board to teach the grade level and subject matter being taught in the class to which the teacher is assigned, including collaborating teachers, but not including administrators, guidance counselors, or media specialists.

(5) "Content-focused professional development" means professional development that is teacher focused, discipline-based and content grounded, and provides teachers with in-depth learning experiences in the chosen core discipline.

(6) "District report card (base)" means the summary of district and school information that is required to be published in the newspaper with the largest paid circulation in the county in which the district resides.

(7) "District report card (expanded)" means the compilation of information, including the district report card (base) and other information as required in Section 5 of this administrative regulation, including the disaggregated data elements, available for viewing in the district central office upon request by parents and public.[copies shall be made available at no charge or at a charge not to exceed cost]

(8) "School means an A1 school as defined in 703 KAR 5:040, Section 1(1).

(9) "School report card (base)" means the printed compilation of school information to be sent to the school to every parent or guardian with a child or children in a school.

(10) "School report card (expanded)" means the compilation of information, including the school report card (base) and other information as required in Section 3 of this administrative regulation, including the disaggregated data elements, available for viewing in the main office of each school upon request of parents and public.

(11) "School safety data" means a list of components as established in Section 2 of this administrative regulation, critical to providing for a safe school environment for students and school staff.

(12) "Spending per student - district" means the total expenditures made divided by the total primary through grade twelve (12) end of year average daily attendance in the district.

(13) "Spending per student - state" means a set of instructional expenditures established in "Calculation Procedures for School Report Card" incorporated by reference in Section 9 of this administrative regulation common to all schools divided by the total end of year average daily attendance of the school.

(14) "Total enrollment" means the number of primary through grade twelve (12) students enrolled in a school or district as reported by the local superintendent at the close of the year.

Section 2. School Report Card (Base). (1) A school report card (base) shall be sent to the parents or guardians of each student in a school by United States mail, unless a waiver is granted by the Department of Education for a proposal that is equally effective in notifying parents or guardians of the card and its contents. If a parent or guardian has more than one (1) child in the same school, one (1) report card may be sent to the family.

(2) A school report card shall include the following information:

(a) The name and address of the school, the name of its principal, and telephone, fax and e-mail contact information, all of which shall be current;

(b) The total enrollment of the school;

(c) The school level results of all components of the Commonwealth Accountability Testing System;

(d) The school level results of state-sanctioned performing arts competitions or other state-sanctioned academic or speech competition, if applicable;

(e) Teacher qualification information, including:

1. The percent of classes taught by a teacher certified for subject and grade level;

2. The percent of classes taught by teachers with a major or minor, or the equivalent in the subject being taught (i.e., certified via an alternative route, having an endorsement in the area being taught, middle school areas of concentration for middle school certification, passing the relevant PRAXIS II content test, or other assessments stipulated by the Education Professional Standards Board);

3. [ ] The percent of classes taught by teachers participating in content-focused professional development related to the content being taught during the base year;

4. [ ] The percent of teachers with a master's degree or greater or the equivalent; and

5. [ ] Average years of teaching experience;

(f) School safety data including:

1. Whether visitors are required to sign in;

2. Whether all parents receive the district discipline code;

3. What procedures are in place for drug and weapons detection;

4. The percentage of classrooms with telephones able to access outside lines; and

5. Data detailing safety violations of aggravated assault (with intent to cause injury), drug abuse, and weapons. The safety data shall include:

a. The number of incidents; and

b. The number of students suspended or expelled for that kind of incident; and

c. The number of students transferred to alternative placement for that kind of incident;

(g) Student resource data including:

1. Spending per student at the school, district and state level.

2. Average student to teacher ratios at the school, district, and state level;

3. Student to computer ratios at the school, district and state level;

4. Percentage of computers five (5) years old or less [classrooms with at least one (1) student workstation with Internet access] and

5. Description of integration of technology into instruction;

(h) Parental involvement information including:

1. Number of students whose parent or guardian had at least one (1) teacher conference;

2. Number of parents and guardians voting in school council elections;

3. The number of parents and guardians serving on the school council or its committees; and

4. Number of school-related volunteer hours;

(i) A narrative describing the public actions being taken to address issues in equity related to the delivery of educational services to all students; and

(j) The names of members of the current year school council with contact information, including telephone numbers or e-mail addresses where the members can be reached for questions or comments.

Section 3. School Report Card (Expanded). (1) A school report card (expanded) shall be available for viewing on request in the office of the school. Copies shall be made available at no charge or at a charge not to exceed cost, except for all data disaggregation pages which shall be supplied at no cost.

(2) A school report card [base] (expanded) shall include:

(a) The data disaggregation pages of reports supplied by the Department of Education;

(b) Documentation of plans, policies and procedures specified in KRS 156.440 for assisting students at risk of academic failure or of engaging in disruptive and disorderly behavior;

(c) The number of students and the percentage of the student population participating in special education programs;

(d) The number of students and the percentage of the student
planning comprehensive needs assessment and any technology related action items included in this plan may be used to fulfill this requirement; and

(h) The number and percent of students enrolled for a fifth year in the primary program in the district and
(i) Copies of all base school report cards.
(3) Upon the implementation of a statewide student data base, the following shall be included in the expanded district report card:
(a) At the high school level, a list of the advanced placement subjects offered by grade, the total number of students enrolled in each advanced placement class, and these enrollments disaggregated by gender, race, and free and reduced lunch participation.
(b) At the high school level, an indication of whether a Commonwealth diploma is offered. If offered, the number of students earning this diploma shall be disaggregated by gender, race, and free and reduced lunch participation.
(c) The total number of students enrolled in the gifted and talented program in each of the following areas disaggregated by gender, race, and free and reduced lunch participation:
   1. General intellectual;
   2. Specific academic;
   3. Creativity;
   4. Leadership; and
   5. Creative and performing arts.

Section 6. Reporting Requirements; Timelines. (1) Prior to printing, the school council, or in the absence of a council, the principal, shall review and approve the school report card (base) and school report card (expanded). The school report card (base) shall be printed and shall be sent to parents and guardians having students in the schools.
(2) A school and district report card (base) may be placed upon the Internet on a site maintained by the district and shall be linked to the official Department of Education Website.
(3) District and school data supplied by the Department of Education shall be available electronically to districts no later than November 1 of each year.
(4) A district shall have twenty-one (21) calendar days in which to report inaccurate data to the Department of Education school report card help desk and to request that the data be changed.
(5) The Department of Education shall have twenty-one (21) calendar days from the receipt of the data change request from the district in which to either correct the data or to report to the district that the data will not be altered.
(6) After all data alterations have been reported to the district by the Department of Education and before the school report card (base) is sent to parents and guardians, the district superintendent shall send a communication by letter, fax or e-mail to the Department of Education accepting the data as amended.
(7) A school report card (base) shall be sent to all parents and guardians no later than seventy-seven (77) calendar days from the department's original release of data to the schools.
(8) A school report card (expanded) shall be available in the schools no later than the date when the school report card (base) is sent to parents and guardians.
(9) A district report card (base) shall be published in the newspaper with the largest paid circulation in the county no later than the second Sunday in February.
(10) A district report card (expanded) shall be available in the district central office no later than the date when the district report card is published in the newspaper, and the school (base and expanded) and district (base and expanded) report cards may be made available on the Internet.
(11) All school and district report cards shall be made available to the Department of Education upon request.

Section 7. Verification; Audits. The Department of Education shall conduct an audit of school and district report cards for compliance with the provisions of this administrative regulation. School and district report card components generated at the school and
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district shall be delivered to the Department of Education upon request.

Section 8. Noncompliance. (1) Noncompliance shall include:
(a) Failure to meet a publication deadline;
(b) Failure to mail school report cards (base) or to implement a
Department of Education approved plan for distributing them;
(c) Nonpublication of a card component or components;
(d) Unauthorized alteration of data; or
(e) Falsification of data.

(2) If a school or district fails to meet the timelines for publica-
tion of a component of the school report card, it shall communicate
by letter to the Department of Education, identifying the component
and indicating when the component was or will be communicated
to the appropriate public.

(3) If a school or district fails to mail the school report cards
(base) to parents and guardians and does not have a waiver
obtained from the Department of Education for a proposal that is
equally effective in notifying parents or guardians of the card and
its contents, it shall determine which parents and guardians did not
receive a report card and supply one (1) to each of them.

(4) If a school district refuses to produce a required compo-
nent of the school report card, the matter shall be referred to the
Office of Communications [Division of Management Assistance] to
investigate and recommend to the Commissioner of Education.

(5) If a school or district alters data supplied by the department
without authorization from the department, it shall supply docu-
mentation to the department documenting the accuracy of its
changes. If the documentation cannot be produced or does not
support the alterations made, the matter shall be treated as the
publication of incorrect data in paragraph (e) of this subsection.

(6) If a school or district publishes incorrect information in a
component of the report card, it shall supply corrected information
to the audience that received the incorrect information, using the
same medium by which it conveyed the original information. If
there is reason to believe that the data error was intentional, the
matter shall be referred to the Office of Communications [Division
of Management Assistance] to investigate and make recommenda-
tions to the Commissioner of Education.

Section 9. Incorporation by Reference. (1) The "Calculation
Procedures for Data Included in the School Report Card", February
2006 [August, 2000], is incorporated by reference.

(2) This material [it] may be inspected, [and] copied, or ob-
tained, subject to applicable copyright law, at the Department
of Education, Office of Assessment and Accountability, 16th Floor,
Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Mon-
day through Friday, 8 a.m. through 4:30 p.m.

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

GENE WILHOIT, Commissioner
KEITH TRAVIS, Chairperson
APPROVED BY AGENCY: January 9, 2006
FILED WITH LRC: February 9, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A
public hearing on this proposed administrative regulation shall be
held on March 30, 2006, at 10 a.m. in the 1st Floor Conference
Room, 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 re-
cieved 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 March 31. 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) 564-9321.

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 defines the implementation and the components of a
school and district report card that clearly communicates with par-
ents and the public about school and district performance and
establishes the standards for a school and district report card.
(b) The necessity of this administrative regulation: This admin-
istrative regulation was necessary to implement provisions of KRS
156.6453.
(c) How this administrative regulation conforms to the content of
the authorizing statute: It provides the specifics for the school
and district report card.
(d) How this administrative regulation currently assists or will as-
sist in the effective administration of the statutes: It provides the
specifics for the school and district report card.

(2) If this is an amendment to an existing administrative regu-
lation, provide a brief summary of:
(a) How the amendment will change this existing administrative
regulation: The amendments to the regulation are technical in na-
ture and affect specific reporting categories (teacher qualifications,
classes taught, students in alternative placement, and classrooms
with Internet access).
(b) The necessity of the amendment to this administrative
regulation: The amendments are necessary, because data for the
categories either does not have the relevance as in the past, or the
data is not being collected.

(c) How the amendment conforms to the content of the
authorizing statute: The amendments conformed to the content of
the authorizing statute and to the rest of the regulation. The statute
requires production of school and district report cards with timely
and accurate information that is to be shared with parents and
other stakeholders. The amendments clarify specific categories of
data and update those that are outdated.

(d) How the amendment will assist in the effective administra-
tion of the statutes: The amendments will provide accurate and
relevant data.

(3) List the type and number of individuals, businesses, organi-
zations, state and local governments affected by this administra-
tive regulation: All public school districts (176) and all schools
(approximately 1,200) operated by these districts; all par-
ents/guardians of students who attend these public schools.

(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 regulate a process by which all parents/guardians
of students attending all public schools will receive information
and data on the educational performance of their school and district.

(5) Provide an estimate of how much it will cost to implement
this administrative regulation:
(a) Initially: There is a cost to local school districts for mailing
or otherwise distributing the school report card to parents of
students attending public schools. This cost will vary by the size of
the school and school district.
(b) On a continuing basis: Local school districts will be required
to distribute the school report card to parents of students attending
public schools on an annual basis.

(6) What is the source of the funding to be used for the implemen-
tation and enforcement of this administrative regulation: Local
and state funds.

(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: Neither this
regulation nor its amendments require an increase in fees or fund-
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EDUCATION CABINET
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATED TO: KRS 156.160(1)(a), (c), 158 6451
STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (c),
FUNCTION, AND CONFORMITY: KRS 156.160
requires the Kentucky Board of Education to adopt administrative
regulations relating to the courses of study for the different grades
and the minimum requirements for high school graduation. The
content standards for the courses of study are described in the
program of studies, 704 KAR 3:303. This administrative regulation
establishes the minimum requirements necessary for entitlement to
a high school diploma, including the requirements beginning with
the graduating class of 2012 [2002].

Section 1. Until the graduating class of 2012 [2002], each student
in a common school shall complete an individual learning plan
which incorporates emphasis on career development and shall
have a total of at least twenty-two [22] twenty-six [26] credits for high
school graduation. Those credits shall include the following minimum
requirements:

(1) Language arts: Four (4) credits (including English I, II, III,
and IV [4]);
(2) Social studies: three (3) credits (to incorporate U.S. History,
Economic, Government, World Geography, and World Civilization;
[2 including one (1) credit in U.S. History];
(3) Mathematics: three (3) credits (including Algebra I, Ge-
ometry, and one (1) elective as provided in the program of studies,
704 KAR 3:303) [3];
(4) Science: three (3) credits (including life science, physical
science, earth and space science as provided in the program of
studies, 704 KAR 3:303) [3];
(5) Health: one-half (1/2) credit [1/2];
(6) Physical education: one-half (1/2) credit [1/2];
(7) History and appreciation of visual and performing arts (or
another arts course which incorporates this content): one (1) credit;
and
(8) Electives: seven (7) credits [8].

Section 2. (1) Beginning with the graduating class of 2012
[2002], each student in a common school shall complete an
individualized plan which incorporates emphasis on career
development and shall have a total of at least twenty-two (22)
credits for high school graduation. Those credits shall include the
content standards as provided in the program of studies, 704 KAR
3:303. Additional standards-based learning experiences shall
align to the student's individual learning plan and shall consist of stan-
dards-based content. The required credits and demonstrated com-
petencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (including English I, II, III,
and IV) to include the content strands of reading, writing, speaking,
listening, observing, inquiry, conventions, analysis, and using tech-
nology as a communication tool. Language arts shall be taken
each year of high school;
(b) Social studies - three (3) credits to include the content
strands of U.S. history, economics, government, civics, and cultures
and societies (to incorporate U.S. History, Economics, Government, World Geography,
and World Civilization);
(c) Mathematics - three (3) credits to include the content
strands of number property and operation, measurement, geometry,
data analysis and probability, and algebraic thinking, and includ-
ing the following minimum requirements:

1. One (1) mathematics course taken each year of high school
to ensure readiness for postsecondary education or the workforce
based on the student's individual learning plan;
2. Required courses shall include: Algebra I, Geometry, and
Algebra II. An integrated, applied, interdisciplinary, or techni-
cal/occupational course that prepares a student for a career path
based on the student's individual learning plan may be substituted
for a traditional Algebra I, Geometry, or Algebra II course on an
individual student basis if the course meets the standards in the
program of studies, 704 KAR 3:303;
3. Prestige shall not be counted as one (1) of the three (3)
required mathematics credits for high school graduation but may
be counted as an elective (including Algebra I, Geometry, and one (1) ele-
cutive as provided in the program of studies, 704 KAR 3:303);
4. Science - three (3) credits that shall incorporate lab-based
scientific investigation experiences and include the content strands
of biological [including life science, physical science, and earth
and space science, and unifying concepts (as provided in the
program of studies, 704 KAR 3:303);
5. Health - one-half (1/2) credit to include the content strands
of individual well-being, consuming decisions, personal wellness,
mental wellness, and community service;
6. Physical education - one-half (1/2) credit to include the
content strands of personal wellness, psychomotor, and lifetime
activity;
7. History and appreciation of visual and performing arts (or
another arts course which incorporates this content) - one (1) credit
to include the content strands of arts, dance, music, theatre, and
visual arts, or a standards-based specialized arts course based on
the student's individual learning plan;
8. Academic and career interest standards-based learning
experiences - seven (7) credits including four (4) standards-based
learning experiences in an academic or career interest based on
the student's individual learning plan;
9. Demonstrated performance-based competency in technol-
y [Electives - seven (7) credits];
(2) A local board of education may substitute an integrated,
applied, interdisciplinary, technical/occupational course, or higher
level course for a required course if the alternative course provides
rigorous content and addresses the same applicable components
of 703 KAR 4:060. If a substitution is made, a rationale and course
description shall be filed with the Department of Education;
(3) For students with disabilities, a local board of education
may substitute a functional, integrated, applied, interdisciplinary,
technical/occupational, or higher level course for a required
course if the alternative course provides rigorous content and
addresses the same applicable components of 703 KAR 4:060. If a
substitution is made, a rationale and course description shall be
filed with the Department of Education.

Section 3. (1) A district shall implement an advising and guid-
ance process throughout the middle and high schools to provide
support for the development and implementation of an individual
learning plan for each student. The plan shall include career develop-
ment and awareness and specifically address the following:

1. Academic Expectations 2-38-2-38 as established in Academic
Expectations, 703 KAR 4:060;
2. A district shall develop a method to evaluate the effectiveness
and results of the individual learning plan process. The
evaluation method shall include input from students, parents, and
school staff. As part of the evaluation criteria, the district shall
include indicators related to the status of the student in the
undergraduate [12] months following the date of graduation.
3. A district shall maintain each student's individual learning
plan. The individual learning plan shall be readily available to the
student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 4. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the program of studies, 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance standards and evaluation procedures to determine if the content and performance standards have been met.

(a) A board of education may award credit toward high school graduation based on:

(1) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one subject;

(b) A standards-based performance-based credit, regardless of the number of instructional hours in one subject; and

(c) A standards-based credit earned by a student enrolled in grade 5, 6, 7 or 8 if:

1. The content of the course is the same as is established in the Program of studies, 704 KAR 3:303; and

2. The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(f) A district shall establish a policy for a performance-based credit system that includes, at least:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards as addressed in 704 KAR 3 303, Program of studies, and 703 KAR 4 060, Academic expectations;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are designed to further student progress towards the individual Learning plan, supervised by qualified instructors and aligned with state and local content and performance standards.

(4) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Section 2(1) of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; and

(f) Standards-based internships, cooperative learning experiences, or other supervised experience in the school and the community.

(5) Each local board of education shall maintain a copy of its [local] policy on high school graduation requirements. [a] This policy shall include a description of how the requirements address KRS 158 6451(1)(b) and 703 KAR 4 060.

1. If a high school does not have a school council, this description shall be provided by the local board.

2. If a high school does have a school council, this description shall be provided by the school council to the local board of education.

(b) A letter of assurance of compliance and a copy of the local policy from the local board of education and school council shall be submitted to the Department of Education by the local board. If the local board or school council amends its policy, a letter of assurance of compliance referencing the amendments shall be filed with the Department of Education by the local board.

Section 5. [3] (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.

Section 6. [4] This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal or teacher from awarding special recognition to a student.

Section 7. [5] If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements, the student may be granted an alternative program leading to receipt of a high school diploma, an alternative course of study shall be offered. This course of study shall be based upon student needs and the provisions specified in 704 KAR 3 303, Program of studies [leading to receipt of a diploma, an alternative program shall be offered]. The program shall be based upon student needs, as specified in the individual educational plan, and shall be reviewed at least annually. A student who completes this course of study shall receive a certificate of work readiness and employability to be awarded [be recognized as achievement]. This may be accomplished by the local board of education consistent with the graduation practices for all students [awarding a certificate].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 158.070(4).

GENE WILHOIT, Commissioner
KEITH TRAVIS, Changer
APPROVED BY AGENCY: January 9, 2006
FILED WITH LRC: February 9, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on March 30, 2006, at 10 a.m. in the First Floor Conference Room, Capitol 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 March 31, 2006. 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, Capitol Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4744, fax (502) 564-9321.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin M. Nolan

1. Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum high school graduation requirements for students. The regulation includes existing high school graduation requirements and new graduation requirements for students beginning in 2010.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS 156.160 and 156.645.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the minimum high school graduation requirements in accordance with KRS 156.160 and KRS 156.645.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation provides guidelines and minimum requirements for local districts to meet the educational goals and capacities required of students in Kentucky's public education system as defined by KRS 156.645.

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 704 KAR 3:305 includes revisions to the content area requirements for students to graduate from high school, including rigorous mathematics instruction every year, lab-based science courses, requirements for guidance programs and individual learning plans for students, and descriptions of the ways students may earn credit in high school.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is being amended to increase the rigor of secondary education for all students in Kentucky schools to help increase the success of students in post-secondary education and training.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.645 identifies the capacities required of students in the public education system. This administrative regulation further establishes the content requirements that will allow and assist all students to acquire those capacities.

(d) How the amendment will assist in the effective administration of the statute: 704 KAR 3:305 establishes the required content that must be provided to students in order to meet the minimum high school graduation requirements.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local districts and schools must ensure the content established by 704 KAR 3:305 is provided to each student prior to high school graduation.

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 districts and schools will revise course offerings and available educational opportunities to ensure students have access to required content.

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 or school districts to implement this administrative regulation. Districts and schools will use existing funding to implement the regulation. In the event additional mathematics teachers are needed for the additional mathematics requirement, existing staffing patterns would need to be adjusted.

(b) On a continuing basis: There will be no additional costs to the agency or school districts 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: 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: This regulation does not relate to fees.

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

9. TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

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

806 KAR 17:160. Creditable coverage for health insurance.


STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-220(4)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director [Commissioner of Insurance] to promulgate administrative regulations necessary for or as an aid to the effective implementation or provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-200(6)(a) incorporates a "public health plan" within the definition of "creditable coverage." KRS 304.17A-200(6)(a) requires the commissioner of insurance to define a public health plan, KRS 304.17A-220(4)(d) authorizes the commissioner to specify categories of benefits. Pursuant to KRS 304.17A-220(4)(d), the periods of creditable coverage within these categories of benefits may be used to reduce the preexisting condition exclusion applicable to the participant or beneficiary. KRS 304.17A-220(4)(d) authorizes the executive director [Commissioner of Insurance] to specify how periods of creditable coverage shall [may] be certified. This administrative regulation establishes the form that shall be used by insurers for certification of periods of creditable coverage.

Section 1. Definitions. (1) "Creditable coverage" is defined in KRS 304.17A-005(8).

(2) "Health benefit plan" is defined in KRS 304.17A-005(19).

"Public health plan" means any plan established or maintained by a state, county, or other political subdivision of a state that provides health insurance coverage to individuals who are enrolled in the plan.

Section 2. Categorization of Benefits. A group health-plan or health-insurer-offering group health-coverage may use the following categories of benefits as creditable coverage: the aggregate period of which may be used to reduce or eliminate the waiting period for a pre-existing condition exclusion:

(a) Mental health;
(b) Substance abuse treatment;
(c) Prescription drugs;
(d) Dental care, and
(e) Vision care.

Section 3. Creditable Coverage Certification. (1) The certification for periods of creditable coverage with respect to an individual insured covered under:

(a) An individual health benefit plan shall be in the form provided in the Form HIPMC-C1, Certificate of Individual Health Plan Coverage, and [Certificate of Individual Health Plan Coverage which is incorporated by reference into the administrative regulation.]

(2) The certification for periods of creditable coverage with respect to an insured enrolled in a group health benefit plan shall:

(a) Include the information as identified in 26 C.F.R. 54.9801-5(a)(3)(a); or

(b) Be in the form, model certificate, as identified in 69 Fed. Reg. 78725, effective December 30, 2004, [provided in the Const-
STATE OF GROUP HEALTH PLAN COVERAGE WHICH IS INCORPORATED BY REFERENCE INTO THIS ADMINISTRATIVE REGULATION.

Section 3, Incorporation 4. [Material Incorporated by Reference. 1. Form HIPMC-C1, "Certificate of Individual Health Plan Coverage," Kentucky Office of Insurance, January 2006 edition (The following material is incorporated by reference.)(g) Certificate of Individual Health Plan Coverage (05/1998 Edition), Department of Insurance; and (b) Certificate of Group Health Plan Coverage (05/1998 Edition), Department of Insurance; and] 2. This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Office (Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The form may also be obtained on the office's Web site at: http://dol.prk.gov/kentucky.

R. GLENN JENNINGS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. GLASPER, Secretary
For LAUJANA S. WILCHER, Secretary
APPROVED BY AGENCY: February 10, 2006
FILED WITH LRC: February 10, 2006 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 2006, at 9 a.m. at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Any individuals interested in being heard at this hearing shall notify this agency in writing by March 15, 2006, 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact persons:

CONTACT PERSONS: Melese Kelch, Health Insurance Policy and Managed Care Division, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Melese Kelch
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides the required form for insurers offering health benefit plans to certify periods of creditable coverage.
(b) The necessity of this administrative regulation: This administrative regulation will conform to the revised federal regulations and will provide insurers with information and a new form for certifying an individual's periods of creditable coverage.
(c) How does this administrative regulation conform 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 in KRS 304.1-010. KRS 304.17A-220(4)(c) authorizes the executive director to specify how periods of creditable coverage shall be certified.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of the Kentucky Insurance Code by providing the form for certifying periods of creditable coverage.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation? This amendment will discard outdated and unclear provisions and incorporate a new revised form for insurers to use when certifying periods of creditable coverage.
(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to direct insurers to the amended federal form for group health plans and the revised Certificate of Individual Health Plan Coverage form (HIPMC-C1), which is incorporated by reference.
(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 in KRS 304.1-010. KRS 304.17A-220(4)(c) authorizes the executive director to specify how periods of creditable coverage shall be certified. Therefore, this amendment provides information and a new form for certifying periods of creditable coverage.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of the Kentucky Insurance Code by providing the revised form, HIPMC-C1, for certifying periods of creditable coverage and removing vague and unclear language in the regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 28 insurers currently offer health benefit plans in the Commonwealth of Kentucky and approximately one million individuals are covered under these 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: These insurers are currently required to provide certificates of creditable coverage to individuals in order to comply with federal and state regulations. Furthermore, the U.S. Department of Health and Human Services prescribed a revised model certificate for insurers to use effective January 2005. The model certificate is identified in this administrative regulation. Therefore, the office does not believe the implementation of this revised certificate or this administrative regulation will be unduly burdensome for insurers.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: No cost associated with implementation of this regulation is anticipated.
(b) On a continuing basis: No cost on a continuing basis is anticipated.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation is the existing 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 administrative regulation does not increase 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 establish fees directly or indirectly.
(9) TIERING: Is tiering applied? No tiering is applied, since this administrative regulation provides a form for use by insurers offering health benefit plans in the Commonwealth of Kentucky.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Division of Health Insurance Policy and Managed Care
(Amendment)

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17B-031(1)

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NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director [commissioner] to make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17B-031(1) requires the office [department] to promulgate administrative regulations necessary to carry out provisions of KRS 304.17B regarding Kentucky Access. This administrative regulation establishes health benefit plan requirements for Kentucky Access.

Section 1. Definitions. (1) "FFS" means a fee-for-service product type.
(2) "Health benefit plan" is defined in KRS 304.17-005(19).
(3) "Kentucky Access" is defined in KRS 304.17B-001(17).
(4) [(b)] "PPO" means a preferred provider organization product type.
(5) [(c)] "Rider" means an endorsement to a health benefit plan that modifies clauses and provisions of the health benefit plan, including or excluding coverage, in the manner set forth in the rider.
(6) [(d)] "Standard health benefit plan" is defined by KRS 304.17B-001(25).

Section 2. Kentucky Access Health Benefit Plans. (1) Kentucky Access shall offer the following three (3) health benefit plans in accordance with KRS 304.17B-019:
(a) Traditional access (FFS) plan;
(b) Premier access (PPO) plan;
(c) Preferred access (PPO) plan.
(2) The traditional access (FFS) plan shall include the benefits, and be subject to the deductible and coinsurance amounts listed in HIPMC-KAP-1 [01] [06] [14] [02].
(3) The premier access (PPO) plan shall include the benefits, and be subject to a choice of deductible and coinsurance amounts listed in HIPMC-KAP-2 [01] [06] [14] [02].
(4) The preferred access (PPO) plan shall include the benefits, and be subject to the deductible and coinsurance amounts listed in HIPMC-KAP-3 [01] [06] [14] [02].

Section 3. Kentucky Access Health Benefit Plan Riders. (1) Kentucky Access shall offer the following optional riders to the health benefit plans established in Section 2 of this administrative regulation:
(a) Pharmacy rider; and
(b) Mental health rider.
(2) The pharmacy rider shall include a copayment amount as listed in HIPMC-KAR-1 [06] [02].
(3) The mental health rider shall include a coinsurance amount as listed in HIPMC-KAR-2 [12] [00].

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Traditional Access Plan Benefit Summary HIPMC-KAP-1", [01] [06] [14] [02];
(b) "Premier Access Plan Benefit Summary HIPMC-KAP-2", [01] [06] [14] [02];
(c) "Preferred Access Plan Benefit Summary HIPMC-KAP-3", [01] [06] [14] [02];
(d) "Pharmacy Rider Benefit Summary HIPMC-KAP-1", [06] [02]; and
(e) "Mental Health Rider Benefit Summary HIPMC-KAP-2", [12] [00].
(2) 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 internet website at http://doi.ky.gov/Kentucky/ [www.doi.state.ky.us].

R. GLENN JENNINGS, Executive Director
CHRISTOPHER LILLY, Commissioner
JOHN W. CLAY, Deputy Secretary
For LAJUANA S. Wilcher, Secretary
APPROVED BY AGENCY: February 10, 2006

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FILED WITH LRC: February 10, 2006 at 2 p.m.
PUBLIC HEARING and COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2006, at 9 a.m. 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 March 15, 2006, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 March 31, 2006. 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: Melea Kelch, 215 West Main Street, P.O. Box 517 Frankfort, Kentucky 40602-0517, phone (606) 564-6086, fax (502) 564-2726.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Kelch

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes health benefit plan requirements for the Kentucky Access program.
(b) The necessity of this administrative regulation: KRS 304.17B-031(1) requires the Office of Insurance to promulgate administrative regulations regarding Kentucky Access. This administrative regulation establishes health benefit plan requirements for Kentucky Access.
(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 304.17B-031(1) requires that the Office of Insurance promulgate administrative regulations regarding Kentucky Access.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes health benefit plan requirements for Kentucky Access.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will change the existing administrative regulation by incorporating new editions of the summary of benefits for the Kentucky Access Traditional, Premier, and Preferred Plans and making minor corrections and clarifications throughout the regulation pursuant to KRS Chapter 13A.
(b) The necessity of the amendment to this administrative regulation: Health benefit plans offered by the Kentucky Access Program are based upon the Standard Health Benefit Plan which is incorporated by reference in 806 KAR 17.180. Amendments were made to 806 KAR 17.180, including the Standard Health Benefit Plan, in November 2004. In order to incorporate these November 2004 changes and to maintain consistency with the Standard Health Benefit Plan, an amendment to this regulation is necessary. Pursuant to KRS 304.17B-019, Kentucky Access is required to offer the Standard Health Benefit Plan.
(c) How the amendment conforms to the content of the authorizing statutes: KHS 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 304.17B-031(1) requires that the Office of Insurance promulgate administrative regulations regarding Kentucky Access. Pursuant to KRS 304.17B-019, Kentucky Access is required to offer the Standard Health Benefit Plan.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist Kentucky Access in
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complying with KRS 304.178-019, which requires Kentucky Access to offer the Standard Health Benefit Plan. This amendment provides revised incorporated material to reflect changes in the Standard Health Benefit Plan.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect approximately 3,500 Kentucky residents who have illnesses or health conditions considered high-risk for health insurance 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: Since the amendment simply clarifies existing benefits as disclosed in the benefit plan summaries, no significant impact is expected.

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

(a) Initially. Costs of implementing this administrative regulation on an initial basis is believed to be minimal, if any, for the Office of Insurance.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis is believed to be minimal, if any, for the Office of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will 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 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 establish or increase any fees.

(9) TIERING: If tiering is applied? No. Tiering is not applied because this administrative regulation applies equally to all Kentucky Access applicants and existing members.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Financial Institutions (Amendment)

808 KAR 10:010. Forms for application, registration; notice filing; reporting and compliance.

RELATES TO KRS 292.327, 292.330(2), (6), (9), (13)(e), 292.350(2), 292.360(2), 292.410(1)(q), 292.430(1); 4958 Ky Adm Ch 30—sec.411

STATUTORY AUTHORITY: KRS 292.500(1), (3) 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.327, 292.330(2), (6), (9), (13)(e), 292.350(2), 292.360(2), 292.410(1)(q), and 292.430(1), and 4958 Ky Adm ch 30—sec.411 require the executive director [department] to prescribe the required forms for registration or renewal registration, for a notice filing, for a registration exemption, and for withdrawal of registration. This administrative regulation establishes the required forms and incorporates by reference those forms.

Section 1. (1) Pursuant to KRS 292.330(1) and (2), Form BD, Application for Registration as a Broker-Dealer, shall be completed to register as a broker-dealer in Kentucky.

(2) Pursuant to KRS 292.330(1) and (2), Form U-4, Uniform Application for Securities Industry Registration or Transfer [Application for Registration as Agent or Transfer of an Agent, Kentucky Investment Adviser Representative Qualification Form], shall be completed to:

(a) Register as an [a broker-dealer] agent or an investment adviser representative in Kentucky; or

(b) Transfer an [a broker-dealer] agent's or representative's registration to another broker-dealer, issuer, or investment adviser.

(3) Pursuant to KRS 292.330(10) [69], Form 33-e-1, Application for Renewal of Issuer Agents, shall be completed to renew registration as an issuer agent in Kentucky.

(4) Pursuant to KRS 292.330(1) and (2), Form ADV, Application for Registration of an Investment Adviser, [including-Schedule I] shall be completed to register or notice file as an investment adviser or covered adviser in Kentucky.

(5) Pursuant to KRS 292.330(10) [69], Form 33-h-1, Application for Renewal of Investment Adviser's License, shall be completed to renew registration as an investment adviser in Kentucky.

(6) Pursuant to KRS 292.360(2), Form 35-a, Application for Registration by Notification (Nonissuer Distribution), shall be completed to register a security for sale in Kentucky by notification.

(7) Pursuant to KRS 292.350(2), 292.360(2), and 808 KAR 10:20, Section 2(1), Form U-1, Uniform Application to Register Securities (Coordination, Qualification or Notification), shall be completed to register a security for sale in Kentucky by coordination, qualification, notification, or as a small corporate offering.

(8) Pursuant to KRS 292.327(11) [1986 Ky Adm Ch 20—sec.411], Form NP, Uniform Investment Company Notice Filing, shall be completed to make a notice filing in Kentucky.

(9) Pursuant to KRS 292.410(1)(q), 808 KAR 10:20, Section 1(3)(b)1, and 808 KAR 10:280, Section 2(1), Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), or [and/or] Uniform Limited Offering Exemption, shall be completed to:

(a) File for an exemption from the registration of a security under KRS 292.410(1)(q); or

(b) Register an offering under 808 KAR 10:280, Section 2(1).

(10) Pursuant to KRS 292.430(1) and (2), Form U-2, Uniform Consent to Service of Process [Investment Adviser, Broker-Dealer, or Issuer], shall be completed by an Issuer required to file a consent to service of process for an investment adviser, broker-dealer, or issuer in Kentucky.

(11) Pursuant to KRS 292.330(3)(e), 292.350(2)(b), 292.360(2)(e), and 292.410(1)(q), and 4958 Ky Adm Ch 30—sec.411, require the executive director [department] to prescribe the required forms for registration or renewal registration, for a notice filing, for a registration exemption, and for withdrawal of registration. This administrative regulation establishes the required forms and incorporates by reference those forms.

(a) Register as a broker-dealer or an investment adviser; or

(b) Register a security for sale by an Issuer in Kentucky.

(12) Pursuant to KRS 292.330(13)(e), Form BDW, Notice of Broker-Dealer Withdrawal, shall be completed if a broker-dealer withdraws his registration in Kentucky.

(13) Pursuant to KRS 292.330(13)(e), Form U-5, Uniform Termination Notice for Securities Industry Registration, shall be completed to terminate registration as an agent or investment adviser registration.

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

(a) Form BD (revised July 1999 [1988]), Application for Registration as Broker-Dealer;

(b) Form U-4 (revised June 2003 [April 1990]), Uniform Application for Securities Industry Registration or Transfer [Application for Registration as Agent or Transfer of an Agent, Kentucky Investment Adviser Representative Qualification Form];

(c) Form 33-e-1 (revised May 2002 [October 1990]), Application for Renewal of Issuer Agents;

(d) Form ADV (revised October 2003 [May 31, 1997]), Application for Registration of an Investment Adviser (may be obtained from Securities and Exchange Commission, Branch of BD and IA Registration, Washington, D.C. 20549) [including Schedule I];

(e) Form 33-h-1 (revised May 2002 [October 1990]), Application for Renewal of Investment Adviser's License;

(f) Form 35-a (revised July 1990), Application for Registration by Notification (Nonissuer Distribution);

(g) Form U-1 (revised July 1990), Uniform Application to Register Securities (Coordination, Qualification or Notification);
(c) [blank]

(h) [blank]

(i) [blank]

(j) [blank]

(k) [blank]

(l) [blank]

(m) [blank]

(n) [blank]

(o) [blank]

(p) [blank]

(q) [blank]

(r) [blank]

(s) [blank]

(t) [blank]

(u) [blank]

(v) [blank]

(w) [blank]

(x) [blank]

(y) [blank]

(z) [blank]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division [Office] of Certificate of Need, 275 East Main Street, third floor [H414-E], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Deputy Secretary
SHAWN CROUCH, Executive Director
APPROVED BY AGENCY: January 30, 2006
FILED WITH LFC: January 31, 2006 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Shane O'Donley
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.
(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2005 update to the 2004-2006 State Health Plan by reference.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation and preparation of the State Health Plan is required by KRS 216B.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation and preparation of the State Health Plan is required by KRS 216B.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment will update the 2004-2006 State Health Plan for 2005.
(b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2004, so the annual update is being prepared for 2005.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) that the State Health Plan be updated on an annual basis.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.
(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 health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The above groups will be impacted by the changes in the 2005 update to the 2004-2006 State Health Plan which removes the review criteria for Rehabilitation Agencies and includes review criteria for primary care centers with outpatient diagnostic and surgical services.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There are no increases in fees or funding necessary with this amendment.
(8) Provide a statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees or directly or indirectly 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(Amendment)

990 KAR 6:020. Certificate of need application fee schedule.

RELATES TO: KRS 216B.040(3)(c)
STATUTORY AUTHORITY: KRS 216B.040(3)(c)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(c) authorizes the Cabinet for Health and Family Services to establish, by administrative regulation, reasonable application fees for certificates of need. This administrative regulation establishes the fee schedule for certificate of need applications.

Section 1. (1) Certificate of need applications not proposing a capital expenditure or proposing a capital expenditure of up to $200,000 [$50,000] shall be assessed an application fee of $1,000 [$250].
(2) Certificate of need applications which propose a capital expenditure greater than $200,000 up to $500,000 [$50,000] shall be assessed an application fee of $2,000 [$500].
(3) Certificate of need applications which propose a capital expenditure greater than $500,000 [$100,000] shall be assessed an application fee of $5,000 [$1,000].
(4) Certificate of need applications which propose a capital expenditure greater than $500,000 up to $500,000 shall be assessed an application fee of $2,000.
(5) Certificate of need applications which propose a capital expenditure greater than $500,000 up to $1,000,000 shall be assessed an application fee of $5,000.
(6) Certificate of need applications which propose a capital expenditure greater than $1,000,000 shall be assessed an application fee of $11,000.
VOLUME 32, NUMBER 9 – MARCH 1, 2006

(7) Certificate of need applications which propose a capital expenditure greater than $10,000,000 shall be assessed an application fee of $11,000 plus an additional fee of 0.005 percent of the capital expenditure and shall be computed to the nearest dollar.

Section 2. Application fees shall be submitted with the application. Applications shall not be deemed complete until the application fee has been paid. Application fees shall be refunded only if notice of withdrawal of the application is received by the cabinet within five (5) working days of the date the application is received by the Cabinet for Health and Family Services.

SHAWN CROUCH, Executive Director
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTEL, Secretary
APPROVED BY AGENCY: January 30, 2006
FILED WITH LRC: January 31, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2005, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 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 attends shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 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: Shane O'Donley 502-564-5598, ext. 3274
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the fee schedule for certificate of need applications
(b) The necessity of the administrative regulation: In order to provide monies necessary to fund the Division of Certificate of Need
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation conforms with KRS 216B.040(3)(c) which authorizes the cabinet to set reasonable certificate of need application fees.
(d) How this administrative regulation currently assesses or will assist in the effective administration of the statutes: KRS 216B.040(3)(c) authorizes the Cabinet for Health and Family Services to establish, by administrative regulation, reasonable application fees for certificates of need. This administrative regulation establishes the fee schedule for certificate of need applications.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will modify the current certificate of need application fees to make them more comparable to our neighboring certificate of need states.
(b) The necessity of the amendment to this administrative regulation: To provide monies to fund the Division of Certificate of Need.
(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation conforms with KRS 216B.040(3)(c) which authorizes the Cabinet to set reasonable certificate of need application fees.
(d) How the amendment will assist in the effective administra-
tion of the statutes: It will allow the Division of Certificate of Need to continue to administer the Certificate of Need Program.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons applying for a certificate of need.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if now, or by the change if it is an amendment: Persons applying for a certificate of need will pay an application fee based upon a fee rate rather than a fee schedule. This may result in higher application fees for some and lower application fees for others. Since the proposed regulation replaces the fee schedule with a more commonly applied fee rate, it is difficult to quantify an overall percentage change. However, the following table illustrates the expected differences in the current and proposed CON application fee based upon identical capital expenditure estimates:

<table>
<thead>
<tr>
<th>Estimated Capital Expenditure</th>
<th>Application Fee Under Current Fee Structure</th>
<th>Application Fee Under Proposed Fee Structure</th>
<th>Difference</th>
<th>Percentage Change in Application Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50,000</td>
<td>$250</td>
<td>$1,000</td>
<td>$750</td>
<td>400% Increase</td>
</tr>
<tr>
<td>$100,000</td>
<td>$500</td>
<td>$2,000</td>
<td>$1,500</td>
<td>250% Increase</td>
</tr>
<tr>
<td>$200,000</td>
<td>$1,000</td>
<td>$5,000</td>
<td>$4,000</td>
<td>400% Increase</td>
</tr>
<tr>
<td>$500,000</td>
<td>$2,500</td>
<td>$10,000</td>
<td>$7,500</td>
<td>225% Increase</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>$5,000</td>
<td>$25,000</td>
<td>$20,000</td>
<td>400% Increase</td>
</tr>
<tr>
<td>$5,000,000</td>
<td>$25,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$10,000,000</td>
<td>$50,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$100,000,000</td>
<td>$100,000</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>$200,000,000</td>
<td>$110,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$400,000,000</td>
<td>$211,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(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: Certificate of Need application fees.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if now, or by the change if it is an amendment: This regulation may increase the amount of certificate of need application fees which are received by the Division of Certificate of Need.
(8) Provide a statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish fees directly in accordance with KRS 216B.040(3)(c).
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation, because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The *equal protection* and *due process* clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This change will only affect local governments which may apply for a Certificate of Need.
3. State the aspect or service of local government to which this administrative regulation relates. A certificate of need is only required if the local government proposes to establish a nonexempt licensed health care service or facility. The most common circum-

-1787-
stance would be the establishment of an ambulance service.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is 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 (+/-): unknown

Expenditures (+/-): unknown

Other Explanation: Since the proposed regulation replaces the fee schedule with a more commonly applied fee rate, it is difficult to quantify an overall percentage change. However, the following table illustrates the expected differences in the current and proposed CON application fee based upon identical capital expenditure estimates.

<table>
<thead>
<tr>
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<th>Difference</th>
<th>Percentage Change in Application Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50,000</td>
<td>$250</td>
<td>$1,000</td>
<td>$750</td>
<td>400% Increase</td>
</tr>
<tr>
<td>$100,000</td>
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</tr>
<tr>
<td>$200,000</td>
<td>$1,000</td>
<td>$3,000</td>
<td>$2,000</td>
<td>200% Increase</td>
</tr>
<tr>
<td>$500,000</td>
<td>$2,000</td>
<td>$5,000</td>
<td>$3,000</td>
<td>150% Increase</td>
</tr>
<tr>
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<td>$10,000</td>
<td>$2,000</td>
<td>25% Reduction</td>
</tr>
<tr>
<td>$10,000,000,000</td>
<td>$11,000</td>
<td>($11,000)</td>
<td>$22,000</td>
<td>22% Reduction</td>
</tr>
<tr>
<td>$10,000,000,000</td>
<td>$11,000</td>
<td>($11,000)</td>
<td>$22,000</td>
<td>22% Reduction</td>
</tr>
<tr>
<td>$100,000,000,000</td>
<td>$61,000</td>
<td>($61,000)</td>
<td>$23,000</td>
<td>23% Reduction</td>
</tr>
<tr>
<td>$200,000,000,000</td>
<td>$111,000</td>
<td>($111,000)</td>
<td>$29,000</td>
<td>26% Reduction</td>
</tr>
<tr>
<td>$400,000,000,000</td>
<td>$211,000</td>
<td>($211,000)</td>
<td>$42,000</td>
<td>44% Reduction</td>
</tr>
</tbody>
</table>

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(Amendment)


RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a), 216B.330, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMANCE: KRS 216B.040(2)(a) requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. EO 2004-726 reorganized the Cabinet for Health Services and the Cabinet for Families and Children and placed the Division [Office] of Certificate of Need under the new Cabinet for Health and Family Services. EO 2005-778 established the Office of Health Policy of which the Division of Certificate of Need is a separate division. This administrative regulation establishes the requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site which can be found at http://chfs.ky.gov/chf/conn.

(4) "Days" means calendar days.

(5) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a citizen of the Commonwealth.

(6) " Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.

(7) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(8) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employee, customer, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(9) "Intermediate care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, personal care beds, and Alzheimer nursing home beds.

(10) "Nonsubstantive review" is defined by KRS 216B.015(17).

(11) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(12) "Owner" means a person as defined in KRS 216B.015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(13) "Proposed service area" means the geographic area the applicant proposes to serve.

(14) "Public information channels" means the Division of Communications in the Cabinet for Health and Family Services.

(15) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet’s Certificate of Need Newsletter.

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

(17) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated [before the cabinet] which a person is required to explain or demonstrate why a person is not required to obtain a certificate of need or is not subject to the penalties provided by KRS 216B.090 for specific violations of the provisions of KRS Chapter 216B.

(18) "Swing bed" means an existing licensed bed within an acute care hospital or a critical access hospital (CAH) that the Office of Inspector General has designated as meeting the special requirements for a hospital or a CAH provider of long-term care services contained in 42 C.F.R. 483.66 and 483.645.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation; and

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(3)(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet for the appropriate Certificate of Need Application forms (2A, 2B, or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation. An application that is postmarked on or before the deadlines established by Section 4 of this administrative regulation shall be accepted by the cabinet as having been timely filed.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.
(4) The cabinet shall not deem an application complete unless:
(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or
(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:
(a) Increase the scope of the project;
(b) Increase the amount of the capital expenditure;
(c) Expand the size of the proposed service area;
(d) Change the location of the health facility or health service; or
(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete may be amended at a public hearing to:
(a) Decrease the scope of the project;
(b) Decrease the amount of the capital expenditure; or
(c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:
(a) The facility has not yet been licensed;
(b) The location is within the county listed on the certificate of need application; and
(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need.

(9) If a request is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review are pursuant to KRS 216B.095(3)(a) and Section 8 of this administrative regulation shall be as follows:
(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment and new technological developments shall be given on the third Thursday of the following months:
1. January; and
2. July.
(b) Public notice for residential hospice facilities, hospice agencies and home health agencies shall be given on the third Thursday of the following months:
1. February; and
2. August.
(c) Public notice for ground ambulance providers, private duty nursing services, mobile services and rehabilitation agencies shall be given on the third Thursday of the following months:
1. March; and
2. September.
(d) Public notice for day health care programs, prescribed pediatric extended care facilities and personal care beds shall be given on the third Thursday of the following months:
1. April; and
2. October.
(e) Public notice for acute care hospital beds, psychiatric hospital beds, special care neonatal beds, [hospital psychiatric], com-
prehensive physical rehabilitation beds, chemical dependency beds [federal], ambulatory care centers, freestanding ambulatory surgical centers, primary care centers with outpatient diagnostic and surgical services, and bething centers shall be given on the third Thursday of the following months:
1. May; and
2. November.

(f) Public notice for long-term care beds and acute care hospital beds including all other State Health Plan-covered services to be provided within the proposed acute care hospital shall be given on the third Thursday of November.

(g) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:
1. June; and
2. December.

(h) A proposal not included in paragraphs (a) through (g) of this subsection shall be placed in the cycle that the cabinet determines to meet appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificates of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review requested pursuant to Section 8 of this administrative regulation. Applications for which nonsubstantive review status has been requested pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:
(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for approval or denial of a certificate of need shall begin upon public notice being given; and
(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(6) A determination that an application is complete shall:
(a) Indicate that the applicant has minimally responded to the necessary items on the application;
(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and
(c) Not imply that the application has met the review criteria for approval of a certificate of need.
(7) If the cabinet finds that the application is incomplete, the cabinet shall:
(a) Provide the applicant with written notice of the information necessary to complete the application; and
(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet’s request for additional information:
1. The applicant submits the information necessary to complete the application by the date specified in the request; or
2. The applicant requests in writing that the cabinet review its application as submitted.
(8) If, upon the receipt of the additional information, the cabinet finds that the application for formal review is complete, the cabinet shall:
(a) Notify the applicant in writing that:
1. The application for formal review has been deemed complete;
2. Review of the application for approval or denial of a certificate of need shall begin upon public notice being given; and
(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.
(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:
(a) Notify the applicant in writing that:
1. The application has been deemed complete;
2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and
3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and
(b) Give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 2168.055(3)(a) through (e) shall be mailed to affected persons.
(10) If the application, or if the information submitted, is insufficient to complete the application, the cabinet shall:
(a) Request the information necessary to complete the application; and
(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:
1. The applicant submits the information necessary to complete the application; or
2. The applicant requests in writing that its application be reviewed as submitted.
(11) Once an application has been deemed complete, an applicant shall submit additional information to be made part of the public record unless:
(a) The information is introduced at a hearing; or
(b) In the case of a deferred application, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice.
(12) A determination that an application is complete shall:
(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;
(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and
(c) Not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:
(1) Consistency with plans.
(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:20.
(b) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.
(c) If an application seeking to reestablish a licensed healthcare service, facility, or service, which was provided at the healthcare facility and which was voluntarily discontinued by the applicant, shall be considered consistent with the State Health Plan under the following circumstances:
1. The termination or voluntary closure of the former healthcare service or facility;
2. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;
3. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;
4. Did occur while the facility was in substantial compliance with applicable administrative regulations and which was otherwise eligible for recredential;
5. Was not an express condition of any subsequent Certificate of Need approval; and
6. Did not occur less than twenty-four (24) months prior to the submission of the application to reestablish;
2. The proposed healthcare service shall be provided within the same service area as the former healthcare service;
3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location;
4. The application does not seek to reestablish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:
(a) If the applicant has identified a need for the proposal in the geographic area defined in the application;
(b) If the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.
(e) For purposes of reviewing applications for long-term care beds other than personal care beds:
1. A nursing facility (NF) bed shall:
a. Include long-term care beds licensed as Alzheimer beds, intermediate care beds, skilled nursing beds, nursing facility beds, and nursing home beds; and
b. Not include personal care beds, nursing home beds established under the continuing care retirement community (CCRC) provisions of the administrative regulation, or long-term care beds located in state or locally operated facilities.
2. The average number of empty beds for a county shall be calculated by multiplying the number of licensed non-CCRC licensed NF beds as reported in the cabinet’s latest Annual Long-Term Care Services Report times the occupancy percentage for the county as also reported in the cabinet’s latest Annual Long-Term Care Services Report.
3. The number of beds being requested by the applicant shall exceed:
4. As reported in the cabinet’s latest Annual Long-Term Care Services Report, the number of patients from the applicant’s county of location who found NF beds placement in a non-contiguous county shall equal B.
5. The average number of empty beds in the county of application and all counties contiguous to the county of application shall equal C.
(b) For purposes of reviewing applications for long-term care beds other than personal care beds, consistency with Criteron 2 (Need) shall only be found if:
A ≤ B ≤ C
(3) Accessibility. The cabinet shall determine whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.
(4) Interrelationships and Linkages. The cabinet shall determine:
(a) Whether the proposal shall serve to accomplish appropriate
and effective linkages with other services, facilities, and elements of the health care system in the region and state; and
(b) Whether the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.
(c) Costs, economic feasibility, and resource availability. The cabinet shall determine:
(a) Whether it is economically feasible for the applicant to implement and operate the proposal; and
(b) If applicable, whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.
(d) Quality of services. The cabinet shall determine:
(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and
(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) The cabinet may grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:
(a) There is no substantial change in health services or bed capacity, and
(b) The change of location or relocation is within the same county or
(c) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.495 and is to the same campus as a licensed psychiatric residential treatment facility.

(2) In addition to the projects specified in KRS 216B.059(3a) through (3e), the Division [Office] of Certificate of Need may grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;
(b) The proposal involves the establishment of an ambulatory surgery center or an unlicensed ambulatory surgery center that was existing and operating by July 16, 1997; if
1. The unlicensed ambulatory surgery center was initially established as a private office or clinic of physician; and
2. The application to establish or expand was declared complete prior to January 6, 2000;
(c) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;
(d) The proposal involves an application to establish a rehabilitation agency;
(e) The proposal involves an application to [acquire and] relocate nursing facility beds from one long term care facility to another long term care facility and the requirements established in this paragraph are met.
1. If the [acquisition and] relocation takes place within the same county, the following restrictions shall apply:
   a. The application shall be filed on or before September 28, 2005; and
   b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application.
2. If the relocation is to be from one county to another county, the following restrictions shall apply:
   a. The letter of intent shall be filed no later than August 29, 2005 and the application shall be filed no later than September 28, 2005;
   b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application;
   c. The selling facility shall be located in a county that had a nursing facility bed occupancy rate of less than ninety-five (95) percent (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report;
   d. The acquired beds shall only be relocated to a county whose nursing facility bed occupancy was ninety-five (95) percent or greater (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report; and
   e. A long term care facility shall not sell or acquire more than ten (10) of its licensed nursing facility beds; or
(f) [The proposal involves an application to establish no more than thirty (30) nursing facility beds at a dual licensed pediatric facility as defined in 507 KAR 1:032, Section 1.]
(g) The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same ADD; and
a. There is no increase in the total number of licensed acute care beds in that ADD; and
b. The hospital from which such beds are relocated deliciencies these beds.

2. If neonatal Level II beds are relocated or transferred pursuant to this section:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

(c) The relocation shall not leave the transferring hospital with less than four (4) such beds unless the relocated beds represent all of its neonatal Level II beds.
(h) The proposal involves an application by an existing licensed hospital to:
1. Convert licensed psychiatric or chemical dependency beds to acute care beds;
2. Not convert special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;
3. Convert and implement the beds on-site at the hospital's existing licensed facility; and
4. Delicense the same number of psychiatric or chemical dependency beds that are converted;
(i) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:
1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;
2. Implement the beds on-site at the existing licensed hospital; and
3. Delicense the same number of converted beds.
(j) If an application is denied nonsubstantive review status by the Division [Office] of Certificate of Need, the application shall automatically be placed in the formal review process.
(k) If an application is granted nonsubstantive review status by the Division [Office] of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.
(l) If an application is granted nonsubstantive review status by the Division [Office] of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.
(m) If an application is granted nonsubstantive review status by the Division [Office] of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.
(n) Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.
(o) If an application for certificate of need is granted nonsubstantive review status by the Division [Office] of Certificate of Need, there shall be a presumption that the facility or service is needed.
and applications granted nonsubstantive review status by the Division (Office) of Certificate of Need shall not be reviewed for consistency with the State Health Plan.

(7) The cabinet shall approve applications for certificates of need that have been granted nonsubstantive review status by the Division (Office) of Certificate of Need if:
(a) The application does not propose a capital expenditure; or
(b) The application proposes a capital expenditure and the cabinet finds that the facility or service with respect to which the capital expenditure is proposed to be made is required. The cabinet shall find that the facility or service with respect to which the capital expenditure is proposed to be made is required, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.
(8) The cabinet shall disapprove applications for certificates of need that have been granted nonsubstantive review if:
(a) The cabinet finds that the applicant is not entitled to nonsubstantive review status; or
(b) The cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.
(9) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status by the Division (Office) of Certificate of Need within thirty-five (35) days of the date that public notice is given that nonsubstantive review status has been granted.
(10) If a certificate of need is denied following nonsubstantive review, the applicant may:
(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 of this administrative regulation;
(b) Request that the application be placed in the next cycle of the formal review process; or
(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.
(2) Notification of approval shall be in writing and shall include:
(a) Verification that the review criteria for approval have been met;
(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;
(c) Notice of appeal rights; and
(d) The amount of capital expenditure authorized, if applicable.
(3) Written notification of disapproval shall include:
(a) The reason for the disapproval; and
(b) Notice of appeal rights.
(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.
(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing.
(b) If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.
(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.
(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.
(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.
(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person if the application is subject to formal review, or an affected person if the application has been granted nonsubstantive review, within:
(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or
(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.
(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:
(a) The person is not a hospital, and the person is licensed by the appropriate Kentucky licensing authority to provide the service necessary to alleviate the emergency; or
(b) The person is a hospital, and the hospital has an already-issued certificate of need to provide the service necessary to alleviate the emergency;
(c) The Division (Office) of Certificate of Need is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and
(d) The Division (Office) of Certificate of Need acknowledges in writing that it recognizes that an emergency does exist.
(2) The notice to the Division (Office) of Certificate of Need shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services, which shall contain the following information:
(a) A detailed description of the emergency which shall include at least the following information:
1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including a proof of eligibility for the service;
2. A list of the providers in the county licensed to provide the services that will be provided during the emergency; and
3. Proof that:
   a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or
   b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;
   c. The steps taken to alleviate the emergency;
   d. The location or geographic area where the emergency service is being provided; and
   e. The expected duration of the emergency.
(b) The Division (Office) of Certificate of Need may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency does exist.
(3) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.
(4) The person providing the emergency service may continue
to alleviate the emergency circumstances without a certificate of need until:

(6) Once a Certificate of Need is issued, it shall be issued for the limited purpose of alleviating the emergency and shall remain in effect until the emergency ceases to exist. An emergency shall cease to exist if the person or persons to whom the service is being rendered no longer require the service or an existing or new provider becomes licensed or certified to provide the service for which the emergency has been declared and provides notice to the Division [Office] of Certificate of Need and the Office of Inspector General that it can meet the needs of the person or persons for whom the emergency service is being provided.

(7) When the emergency circumstance ceases to exist, the CON holder shall notify the Division [Office] of Certificate of Need that it is no longer providing the service and the Division [Office] of Certificate of Need shall notify the Office of Inspector General that the emergency no longer exists.

(8) The Office of Inspector General shall revoke the license of the emergency certificate of need holder upon notification of revocation by the Division [Office] of Certificate of Need.

(a) The emergency ceases to exist; or
(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfers of Certificates of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the certificate. The certificate is valid for the new owner.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another owner for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by the administrative regulation shall be made by filing the documents with the Division [Office] of Certificate of Need, HS1E-B, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the due date; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next business [working] day after the due date.

(3) The Division [Office] of Certificate of Need shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the documents.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(5) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period shall run until 4:30 p.m. eastern time of the first business [working] day following the Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) [Health facilities established without a certificate of need pursuant to KRS 216B.020(c)(3)](a) shall not be considered affected persons for purposes of KRS 216B.088 and shall not have the right to request a public hearing pursuant to KRS 216B.088.

(2) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.330. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2)(a) Unless otherwise specified herein, all hearings shall be conducted pursuant to this section.

(2)(b) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

(4) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the Certificate of Need [CON] newsletter if applicable; and

(c) Provided to members of the general public through public information channels.

(4)(b) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Division [Office] of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) (4)(c) Any disseminated motion made by a party to the proceedings shall be filed and served with the hearing officer at least three (3) business [working] days prior to the scheduled date of the hearing.

(6) (5)(d) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:
1. Formulate and simplify the issues;
2. Identify additional information and evidence needed for the hearing; and
3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:
1. Tape record the conference; or
2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:
1. Instruct the parties to:
   a. Formulate and submit a list of genuine contested issues to be decided at the hearing;
   b. Raise and address issues that can be decided before the hearing; or
   c. Formulate and submit stipulations to facts, laws, and other matters;
2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;
3. Rule on any pending motions for discovery or subpoenas; or
4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7)(6)(a) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;
(b) Witness List, Form #4; and
(c) Exhibit List, Form #5 and attached exhibits.

(7)(6)(b) If a hearing is requested on an application which has been deferred from a previous cycle, for which a hearing had previously been scheduled, parties shall:
1. File a new Notice of Appearance, Form #3; and
2. Either:
   a. Incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5); or
   b. File amended Forms #4 and #5.
(b) A new party to the hearings shall file original Forms #3, #4 and #5.
(c) Forms shall be filed in accordance with subsection (8) of this section.

(2) (46) The hearing officer shall conduct the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(10) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing, including determining the manner or form in which evidence may be presented as well as imposing reasonable and appropriate limits on the time allotted to each party to present their respective cases:

(11) Each party shall have the opportunity to:
(a) Present its case;
(b) Make opening statements;
(c) Call and examine witnesses;
(d) Offer documentary evidence into the record;
(e) Make closing statements; and

(13) Cross-examine opposing witnesses on:
1. Matters covered in direct examination; and
2. At the discretion of the hearing officer, other matters relevant to the issues.

(12) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(14) (44) The hearing officer may:
(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed; and
(b) [Act to exclude irrelevant, immaterial or unduly repetitious evidence, and]
(c) Question any party or witness.

(15) (44) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer. The hearing officer, however, shall prohibit and exclude evidence or information which is irrelevant, immaterial, or unduly repetitious.

(16) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to any issue.

(17) Witnesses shall be examined under oath or affirmation.

(18) Each party shall have the opportunity to present its case in the following manner:
(a) Make opening statements, although each party is limited to twenty (20) minutes each;
(b) Introduce direct testimony of relevant, pertinent witnesses, although all such testimony shall be submitted in writing;
(c) Offer documentary evidence into the record;
(d) Make closing statements, although each party is limited to twenty (20) minutes each; and
(e) Conduct reasonable cross-examination of opposing witnesses on:
1. Matters covered in direct examination; and
2. Other matters which the hearing officer determines are relevant, pertinent, and productive in resolving the disputed issues.

(19) The direct testimony of witnesses shall be presented in the following manner:
(a) In writing;
(b) In the form of questions and answers or a narrative statement;
(c) Sworn or attested to under the penalty of perjury; and
(d) All such individuals shall make themselves available at the time of the hearing for purposes of cross-examination.

(20) At least five (5) business days prior to any hearing, the direct testimony of all witnesses shall be filed and served upon all parties. At least three (3) business days prior to any hearing, objections to any portion of the proposed direct testimony shall be filed and served upon all parties. (42) Witnesses may, at the discretion of the hearing officer:
(a) Appear through deposition or in person; and

(21) Provide written testimony in accordance with the following:
1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;
2. The witness shall authenticate the document under oath; and
3. The witness shall be subject to cross-examination.

(22) The hearing officer may accept documentary evidence in the form of copies of excerpts if:
(a) The original is not readily available;
(b) Upon request, parties are given an opportunity to compare the copy with the original; and
(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and every other party at least:
1. Seven (7) business [working] days before the hearing for formal review applications; or
2. Five (5) business [working] days for nonsubstantive review applications.

(23) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(24) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(25) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(26) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(27) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:
(a) Approval or disapproval of an application for a certificate of need;
(b) An advisory opinion entered after a public hearing; or
(c) Revocation of a certificate of need; or
(d) Show cause hearing conducted in accordance with Section 18 of this administrative regulation.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:
(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and
(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Hu-
mana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if [whether] a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS 216B.990.

(2) In order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) A health facility established without a certificate of need pursuant to KRS 418.620(2)(a) shall not be considered affected persons for purposes of this section and shall not have the right to request a show cause hearing.

(a) In order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied by an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or

2. Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(b) If a show cause hearing is held, the person being charged shall have the burden of showing cause why that person should not be found to:

1. Have established or be operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation, or

2. Be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(5) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual license inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license

(5) [59] The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(b) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that they:

(a) Have established or are operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or

(b) Are not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) In the event it is alleged that an office or clinic (hereafter collectively referred to as "office") offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B 0202(a), the hearing officer shall base his or her findings of fact and proposed decision on whether the evidence has established the following:

(a) The practice claiming the exemption is 100 percent owned by an individual, organization, or other entity which directly or indirectly owns or is under control and ownership with an accredited medical school operated within the Commonwealth of Kentucky.

(b) The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan.

(c) Services or equipment covered by the State Health Plan which are offered or provided at the office shall be primarily provided to patients whose medical conditions are being treated or monitored by the practice.

(d) A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption is responsible for all decisions regarding the care and treatment provided to patients.

(e) Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office.

(f) Services or equipment covered by the State Health Plan which are offered or provided at the office are related to the professional services offered to patients of the practice claiming the exemption.

(g) Notwithstanding paragraphs (b) and (c) in this subsection, any practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed; and

2. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(h) Notwithstanding the provisions of subsection (a) through (c) in this subsection, an office owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center.

2. The office was established and in operation prior to January 1, 2006; or

3. The office does not provide any services or equipment covered by the State Health Plan.

4. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

(i) Minor medical equipment in excess of the limits set forth in 900 KAR 2:600 is not being utilized without a Certificate of Need or other statutory or regulatory exemption or

(j) Nothing in this section is intended to limit or prohibit the continued operation of an office which was established and in operation prior to January 1, 2006, and operating pursuant to a certificate of need issued specifically with respect to that office;

2. Provisions of an Attorney General opinion issued specifically with respect to that office; or

3. An order issued with respect to that office by a court of competent jurisdiction in the Commonwealth of Kentucky.

(b) For purposes of this section, "Qualified Academic Medical Center" means:

1. Any institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

2. Any institution, organization, or other entity which directly or indirectly owns or is under control and ownership with an accredited medical school operated within the Commonwealth of Kentucky:

3. Any individual, organization, entity, or other person which is qualified under Section 521(1)(c)(3) of the Internal Revenue Code as a nonprofit organization "supporting or operating in support of any institution, organization, entity, or other person of a type or types referenced in subparagraph 1 or 2 of this paragraph.

(10) [10] Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.
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(11) [129] The notice shall advise the person of:
(a) The allegations against him;
(b) Any facts determined to exist which support the existence
of the allegation; and
(c) The statute or administrative regulation alleged to have
been violated.

(12) Notice of the time, date, place, and subject matter of each
hearing shall be:
(a) Mailed to all known affected persons or entities not less
than fourteen (14) days prior to the date of the hearing; and
(b) Published in the Certificate of Need newsletter if applicable.

(13) At least ten (10) days prior to the hearings required or re-
quested pursuant to KRS Chapter 216B, with the exception of
hearings involving applications for or revocation of a certificate of
need, all persons or entities wishing to participate as a party to
the proceeding shall file an original and one (1) copy of the follow-
ing with the cabinet and serve copies on all other known parties to
the proceedings:
(a) Notice of Appearance, (Form #3);
(b) Witness List, (Form #4); and
(c) Exhibit List, (Form #5) and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the
hearing officer shall render findings of fact and a proposed decision
to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact
and proposed decision from the hearing officer, the secretary shall
issue a final decision on the matter.

(16) [149] A hearing officer shall consider the hearing and shall
also be required to establish, through testimony or other evidence
any grounds in support of its position that no action should be
taken by the cabinet.

(17) [141] If a decision is found to have occurred as a result of a
show cause hearing conducted pursuant to subsection (1) of this
section, the cabinet shall take action as provided by KRS Chapter
216B.

(18) [142] If the person is found to have violated any of the
terms of conditions or of any certificate of need approval and license
as a result of a show cause hearing conducted pursuant to sub-
section (4) [149] of this section, the cabinet shall take the following
action:
(a) If the person had not previously been found to be in viola-
tion of the terms and conditions which were made a part of the
person's certificate of need approval and license, the person shall
be given a reasonable period of time, not to exceed sixty (60) days
after issuance of the cabinet's decision, in which to demonstrate
that the violation has been corrected. At the conclusion of this pe-
iod, the cabinet shall verify that the facility or service is operating
in compliance with the terms or conditions of the certificate of need
and license at issue.
(b) If the cabinet is unable to verify that the facility or service
has corrected the violation in accordance with paragraph (a) of this
subsection, or if a person who had previously been found to be in
violation of the terms and conditions which were a part of the per-
son's certificate of need approval and license is found in a sub-
sequent show cause hearing conducted pursuant to this section to be
in violation of the terms and conditions again, the matter shall be
referred to the Office of Inspector General for appropriate action.

Section 19. Administrative Escalations. (1) A person shall not
obligate a capital expenditure in excess of the amount authorized
by an existing certificate of need unless the person has received
an administrative escalation or an additional certificate of need
from the cabinet.

(2) Requests for administrative escalations shall be submitted
to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for
funds which have not been obligated and which do not exceed the
following limits if there is not a substantial change in the project:
(a) Twenty (20) percent of the capital expenditure authorized
on the original certificate of need or $100,000, whichever is
greater, if the capital expenditure authorized on the certificate of
need is less than $500,000,
(b) Twenty (20) percent of the capital expenditure if the capital
expenditure authorized on the certificate of need is $500,000 to
$4,999,999;
(c) Ten (10) percent of the amount in excess of $5,000,000,
plus $1,000,000, for projects if the capital expenditure authorized
on the certificate of need is $5,000,000 to $24,999,999;
(d) Five (5) percent of the amount in excess of $25,000,000,
plus $3,000,000, if the capital expenditure authorized on the certifi-
cate of need is $25,000,000 to $49,999,999; and
(e) Two (2) percent of the amount in excess of $50,000,000,
plus $15,000,000, if the capital expenditure authorized on the certifi-
cate of need is $50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of
need holder shall submit any additional certificate of need appli-
cation fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the
limits set forth in subsection (3) of this section shall:
(a) Constitute a substantial change in a project; and
(b) Require a certificate of need pursuant to KRS
216B.061(1)(a).

(6) The unauthorized obligation of a capital expenditure in
excess of the amount authorized on a certificate of need shall be:
(a) Presumed to be a willful violation of KRS Chapter 216B;
and
(b) Subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As
a condition for the issuance of a certificate of need, a holder of
a certificate of need shall submit progress reports on the Certificate
of Need Six (6) Month Progress Report, Form #8, at the six (6)
month intervals specified in this section.

(2) A notice specifying the date of each progress report is due
shall be sent to every holder of a certificate of need whose project
is not fully implemented.

(3) The cabinet or its designee shall review a progress report
and shall determine:
(a) Whether the required elements have been completed; and
(b) If the required elements have not been completed, whether
sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:
(a) The project has been approved for licensure or occupancy
by the Office of Inspector General; and
(b) A final cost breakdown has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabi-
et may require:
(a) The submission of additional reports as specified in sub-
sections (16) through (18) of this section; or
(b) Progress reports in addition to those required at six (6)
month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of
need shall not be revoked for failure to complete the items required
during a six (6) month period, if the holder of the certificate of need
establishes that:
(a) The failure was due to emergency circumstances or other
causes that could not reasonably be anticipated and avoided by
the holder; or
(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not
been completed for reasons other than those set forth in subsection
(6) of this section, it shall notify the holder of the certificate of
need, in writing, that it has determined to revoke the certificate of
need.

(8) The revocation shall become final thirty (30) days from the
data of notice of revocation, unless the holder requests a hearing
pursuant to KRS 216B.088

(9) The first progress report for all projects other than long-term
care beds shall include:
(a) Projects for the addition of new services or expansion of
existing services that do not involve construction, renovation or
the installation of equipment; plans for implementation of the project;
(b) Projects for the purchase of equipment only; a copy of the

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purchase order;
(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; or
(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.
(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:
(a) Projects converting beds: documentation that all beds are licensed;
(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Office of Inspector General or the Kentucky Board of Emergency Medical Services;
or
(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.
(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:
(a) Construction or renovation projects:
1. Copy of deed or lease of land,
2. Documentation of final enforceable financing agreement, if applicable;
3. Documentation that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and
4. Enforceable contract with a construction contractor; or
(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Office of Inspector General.
(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General and evidence that construction has begun.
(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.
(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General and, if required, that the appropriate license has been approved for the health care service or facility.
(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.
(16) For projects involving long-term care beds:
(a) The first progress report shall include:
1. A copy of the deed or lease of land for projects requiring acquisition of real property; and
2. Evidence that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.
(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:
1. For conversion of bed projects, documentation that the beds in the project are licensed; or
2. For construction projects:
   a. Schedule for project completion with projected dates;
   b. Documentation of final financing;
   c. Documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and
   d. Enforceable construction contract.
(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.
(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General.
(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.
(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.
(21) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.
(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.
(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:
(a) When the biennial review shall be initiated;
(b) Request for information necessary for the review to which the cabinet does not have ready access; and
(c) A deadline for response to the request for information.
(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with Section 18(2) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.
(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion, Form #7.
(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.
(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.
(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.
(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.
(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion. Health facilities established without a certificate of need pursuant to KRS 216B.020(2)(a) shall not be considered affected persons for purposes of this section and shall not have the right to request a hearing regarding an advisory opinion.
(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.
(9) ([#]) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.
(9) [[49]] If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition or Establishment of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required to include ICF/MR respite beds, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that a service or equipment has been added within ten (10) days of addition.

(2) Notice of Addition of a Health Service or Equipment (Form #10) shall be used in making the notification.

Section 24. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the Division [Office] of Certificate of Need.

(2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file Form #11 thereby certifying that:
(a) All residents shall have a written agreement with the continuing care retirement community;
(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;
(c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for participation in the Medicaid Program, and that the restriction shall be disclosed in writing to each of its residents;
(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section, and that such restriction shall be disclosed in writing to its residents;
(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;
(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;
(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;
(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident’s guardian;
(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;
(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Division of Aging Services at the time a move-out notice is given to a resident; and
(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The Division [Office] of Certificate of Need shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form #11 if all conditions are met. If all conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community’s nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Division [Office] of Certificate of Need the payor source for each of its nursing home beds.

(7) Upon request, the continuing care retirement community shall provide the Division [Office] of Certificate of Need the number of each type of bed or living unit within the continuing care retirement community.

Section 25. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds but that the hospital operated prior to becoming a critical access hospital if the hospital decides to discontinue operating as a critical access hospital.

Section 26. Swing Beds. (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.66 or 485.645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds which may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval shall be required.

Section 27. Pilot Angioplasty Program. The provisions of this section shall apply to the pilot project for primary angioplasty in hospitals without on-site open heart surgery ("pilot program") established in the 2004-2005 State Health Plan which is incorporated by reference in 900 KAR 5:030. (1) Hospitals participating in the pilot program shall immediately (within twenty-four (24) hours of the event or on the first business day following the event) report the following events to the Division [Office] of Certificate of Need by fax at (502) 564-0302 or e-mail (oni.cracraft@ky.gov):
(a) Death within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. The report shall indicate if the death was a "cardiac death" or a "noncardiac death".
1. A death shall be considered a "cardiac death" if the death was due to any of the following:
a. Acute myocardial infarction;
b. Cardiac perforation/pencardial tamponade;
c. Arrhythmia or conduction abnormalities;
d. Cerebrovascular accident related to, or suspected of being related to, the cardiac catheterization procedure. An event shall be considered to be a "cerebrovascular accident" if there were acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred:
(e) During the index hospitalization;
f. Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or
2. A death shall be considered a "noncardiac death" if the death was not due to cardiac causes as described in subparagraph 1 of this paragraph.
(b) Emergency coronary artery bypass surgery (CABG) within twenty-four (24) hours of the procedure or hospital discharge. An event shall be considered to be an "emergency" if there is a sudden and often life-threatening mishap that arises in the course of, and as a result of, the performance of a cardiac catheterization or angioplasty procedure. It shall not include patients either transferred directly from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent/life threatening cardiac disease; or
(c) Shock within twenty-four (24) hours of the procedure or hospital discharge.
(2) Hospitals participating in the pilot program shall report to the Division [Office] of Certificate of Need in writing within seven (7)
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[Calendar] days, any of the following events:
(a) Cerebrovascular accident, which are acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred within thirty (30) days after the catheterization but were not clearly related to the procedure;
(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure;
(c) Recurrent Q wave or Non-Q wave Myocardial infarction (MI) during the initial hospitalization;
(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These shall include:
1. Hematoma more than four (4) centimeters;
2. Retropitoneal Bleed;
3. False Aneurysm;
4. AV fistula;
5. Peripheral ischemic/nerve injury; or
6. Hemiaclasis and Hemoiytic anemia.
(3) Hospitals participating in the pilot program shall:
(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) with its collaborating tertiary hospital or with practicing interventional cardiologists. The membership of the joint PI Committee shall, at a minimum, include each of the following disciplines: physicians, nurses and administrators from both the pilot program hospital and the collaborating tertiary hospital;
(b) Convene the Joint PI Committee at least quarterly but sooner if necessary to review the care provided to patients under the pilot program. This review process shall focus on patient outcomes and, at a minimum, include:
1. An assessment of the appropriateness of the selection of each patient entered into the pilot program;
2. All complications, any adverse outcomes, number of the patients requiring and reason for transfer to a tertiary facility;
3. The technical quality of the catheterization and angioplasty procedures performed; and
4. The "door to cath lab time" and "door to treatment time".
(c) Develop and implement a plan of correction for any problems identified;
(d) Develop a process for including the findings of the Joint PI Committee’s review in the pilot program hospital’s performance improvement program;
(e) Require the Joint PI Committee to make a quarterly recommendation to the Division [Office] of Certificate of Need whether the pilot program should continue; and
(f) Require all staff (including, at a minimum, interventional cardiologists, nurses and technicians) as well as representatives of the Emergency Department and Critical Care Unit staffs participating in the pilot program to attend a minimum of one (1) meeting of the Joint PI Committee per year.
(4) Performance of primary angioplasty (as measured by quality indicators including mortality, morbidity, and adverse reactions) at a pilot hospital shall be comparable, on a risk adjusted basis, to the performance of existing angioplasty programs in Kentucky and with similar organizations nationally, according to the National Cardiovascular Data Registry.
(a) If the outcomes are worse at a pilot hospital, that facility shall file and implement a plan of correction with the Division [Office] of Certificate of Need.
(b) If the facility’s results do not improve after one (1) quarter of implementing a plan of correction, the Division [Office] of Certificat of Need may terminate the facility’s participation in the pilot program.
(5) Hospitals participating in the pilot program shall:
(a) Continue to make available the cardiac catheterization service twenty-four (24) hours per day and seven (7) days per week;
(b) Develop policies and procedures that will assure that all interventional cardiologists performing primary angioplasty procedures at the pilot program hospital will maintain an appropriate level of proficiency as a member of the team performing primary angioplasty at the pilot program hospital. The policies and procedures shall detail the process the physician director will utilize to assure the establishment, maintenance and monitoring of the proficiency of each interventional cardiologist;
(c) Maintain a collaborative association and a current, valid collaboration agreement with a tertiary hospital including Joint PI and staff education programs; and
(d) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. All thirty-six (36) of these angioplasty procedures shall be primary angioplasty procedures, excluding patients that have "rescue angioplasty" procedures performed.
(6) The time frame for measuring compliance with procedural utilization requirements shall begin six (6) months after the date of the physician director’s notification to the Division [Office] of Certificat of Need that all training requirements have been fulfilled. Within twelve (12) months from the “start date,” the hospital shall have performed eighteen (18) primary angioplasty procedures or shall receive a warning that approval to participate in the pilot program may be withdrawn.
(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department’s letter of approval, the hospital shall have performed at least another eighteen (18) procedures (a total of thirty-six (36) primary angioplasty procedures) or the program may be discontinued at that site.
(8) Each site shall continue to perform eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (36) primary angioplasty procedures per year, or the program may be discontinued at that site.
(9) All physicians performing percutaneous coronary interven-tion (PCI) at a pilot program hospital shall:
(a) Continue to perform no fewer than one hundred (100) cardic catheterization procedures per year (total diagnostic and therapeutic). At least seventy-five (75) procedures shall be angioplasty procedures unless the procedures are being performed at a facility at which more than four hundred (400) angioplasty procedures are being performed per year; and
(b) Maintain credentials at a hospital at which that operator performs elective angioplasty procedures.
(10)(a) All staff that are hired after the completion of the initial training at the pilot program hospital should complete a training program that mirrors the initial training program. The relevant collaborating tertiary and pilot program hospitals should develop this training program;
(b) Training of all staff including, at a minimum, all Interventional cardiologists, nurses and technicians, shall be performed in the in-arterial balloon pump annually;
(c) BI staff involved in providing PCI, including the Interventional cardiologists, nurses and technicians, shall have a current Advanced Cardiac Life Support (ACLS) certification.
(d) Inservice programs shall at a minimum, be based upon need identified through staff evaluations and quality assurance procedures.
(11) The Division [Office] of Certificate of Need may discontinue the pilot program at a participant hospital at any time after reviewing the following:
(a) Quarterly reports made by the American College of Cardiology - National Cardiovascular Data Registry (ACC-NCDR);
(b) Records obtained through an audit;
(c) Peer review reports; or
(d) Reports on serious adverse events.
(12) Upon notification to the hospital by the Division [Office] of Certificate of Need, the hospital shall terminate the pilot program and cease to perform primary angioplasty procedures.
(13) In order to assist the Division [Office] of Certificate of Need in evaluating the pilot program, the performance of pilot hospitals, and the formulation of recommendations for continuing or modifying the project, the Division [Office] of Certificate of Need may collaborate with universities based researchers to:
(a) Evaluate and compare performance data of pilot hospitals with existing Kentucky angioplasty programs; and
(b) Conduct an evaluation of the short- and longer-term outcomes of patients undergoing primary angioplasty at pilot hospitals with those patients transferred to hospitals with open heart surgical backup.
(14) The Division [Office] of Certificate of Need shall review reports from the collaborating university based researchers as well as quarterly reports made by the ACC-NCDR, records obtained
through audit, peer review reports and reports of serious adverse events in order to develop recommendations for continuing, discontinuing, or modifying the pilot program. If the project is continued, these recommendations shall include establishing criteria for determining need to expand angioplasty services to additional hospitals without on-site surgical backup, qualifications of those hospitals, and ongoing requirements for a hospital's continued provision of this service.

(15) The Division [Office] of Certificate of Need may convene all hospitals participating in the pilot program on a regular basis for the purpose of discussing and assessing the status of the implementation of the pilot program.

(16) Three (3) years from the start date of the pilot program, the Division [Office] of Certificate of Need shall publish a report on the program. The report shall:
(a) Indicate whether it is in the best interest of the commonwealth to eliminate the requirement for open heart surgery for hospitals to perform therapeutic cardiac catheterization; and
(b) The requirements for patient selection, procedural volume, and staffing that hospitals shall continue to meet to provide this service if the Division [Office] of Certificate of Need finds that this service may be provided by hospitals in the absence of on-site open heart surgery.

Section 28. Psychiatric Residential Treatment Facilities. A letter of Intent shall not be required for an application seeking to increase the number of beds at a psychiatric residential treatment facility (PRTF) as permitted by KRS 216B.450 and 216B.455 if the application is submitted by an eight (8) bed or sixteen (16) bed PRTF licensed and operating on July 13, 2004. The applications shall be granted nonsubstantive review status if the application demonstrates the applicant's ability to meet the following standards:
(1) Provision of psychiatric and nursing coverage to assure the continuous ability to manage and administer medications in crisis situations but excluding those that may only be administered by a physician;
(2) Provision of direct care staffing with supervision to manage behavior problems in accordance with the residents' treatment plans, including an array of interventions that are alternatives to seclusion and restraint and the staff training necessary to implement them;
(3) Documentation shall be made available to each mental health professional and to the program director; and
(4) Documentation shall be reviewed and revised as necessary, in accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the documentation shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

Section 29. Equipment Disclosure Report. (1) A Magnetic Resonance Imaging unit (MRI) utilized in the Commonwealth shall be disclosed to the Cabinet of Health and Family Services, Office of Health Policy. This applies regardless of whether the facility at which the unit is located is licensed by the Office of Inspector General or whether the owner or operator of the unit has obtained a Certificate of Need to utilize the unit.
(2) Licensed facilities are required to complete a survey regarding the presence of MRI units pursuant to KRS 20:005. The purpose of this section is to create a similar reporting obligation for MRI units located at facilities which have not obtained or do not require a license to utilize such units.
(3) No later than August 1, 2006, the following information shall be submitted about every MRI unit utilized at an uninsured facility in the Commonwealth:
(a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;
(b) Identification of designated contact person or authorized agent of each such facility;
(c) Make, model, and serial number of each unit;
(d) Date the unit became operational at each site;
(e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational);
(f) Number of scans performed during the previous twelve (12) months; and
(g) Estimate of number of scans to be performed during the next twelve (12) months.
(4) The owner or operator of any MRI unit that becomes operational at an uninsured facility after August 1, 2006, has thirty (30) days after use of the unit is commenced to provide the above information.
(5) The above information shall be provided by completion of "Equipment Disclosure Report" (Form #12). A copy of that form can be obtained, completed, and transmitted electronically by accessing the Office of Health Policy's Web site at http://chp.ky.gov/ohp/epo. A copy can also be obtained from the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 3CB, Frankfort, Kentucky 40621.
(6) Within thirty (30) days of any such events, the designated contact person or authorized agent shall notify the Office Health Policy about any change in the facility's address or the addition of another MRI unit as well as the discontinuation of any such units.
(7) Beginning January 2007 and continuing annually thereafter, all licensed facilities at which MRI units are utilized shall be required to provide the above information for use in the Annual Survey of Magnetic Resonance Imaging Services published by the cabinet.
(8) Failure to provide complete and accurate information in a timely manner shall be construed as a willful violation of this section and shall subject the owner or operator of the unit to a fine of not less than $100 nor more than $500 for each violation.

Section 30. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Letter of Intent (Form #1) (10/12/99);
(b) Certificate of Need Application (Form #2A) (3/6/03);
(c) Certificate of Need Application for Ground Ambulance and Air Ambulance Providers (Form #2B) (6/15/99);
(d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C) (3/6/03);
(e) Notice of Appearance (Form #3) (3/6/03);
(f) Witness List (Form #4) (3/6/03);
(g) Exhibit List (Form #5) (3/6/03);
(h) Cost Escalation Form (Form #6) (6/15/99);
(i) Request for Advisory Opinion (Form #7) (3/6/03);
(j) (Six) 6 Month Progress Report (Form #8) (6/15/99);
(k) Notice of Addition of a Health Service or Equipment (Form #10) (6/15/99); and
(l) Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC) (Form #11) (11/29/00); and
(m) Equipment Disclosure Form (Form #12) (January 31, 2005).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Division [Office] of Certificate of Need, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

SHAWN CROUCH, Executive Director
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: January 30, 2006
FILED WITH LRC: January 31, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit writ-
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Shane O'Donley, 502-564-9589 ext. 3274

(1) Provide a brief summary of:
   (a) What the administrative regulation does: This administrative regulation sets forth the process by which the Certificate of Need Program shall be implemented.
   (b) The necessity of the administrative regulation: Pursuant to KRS 216B.040, the cabinet may promulgate administrative regulations to establish the certificate of need review procedures.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.040 which requires the cabinet implement a Certificate of Need program.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will update the regulation to reflect recent organizational changes as well as modify current procedures in an effort to improve administrative efficiency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This amendment will provide for the following changes: Replace references to the "Office of Certificate of Need" with the "Division of Certificate of Need"; Update the application batching cycle; Modify and reclassify non-substantive review categories in order to add additional new categories; Allow for the possible re-establishment of voluntarily terminated healthcare facilities or services; Improve procedures to conduct Certificate of Need application hearings and show cause hearings; Clarify the meaning of KRS 216B.020(2)(a) which is commonly referred to as the "physician's office exemption"; and Require the distribution and submission of a Magnetic Resonance Imaging Equipment Disclosure Form.
   (b) The necessity of the amendment to this administrative regulation: To improve the efficiency and effectiveness of the current certificate of need process.
   (c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B.040 which requires the cabinet promulgate administrative regulations to establish the Certificate of Need review procedures.
   (d) How the amendment will assist in the effective administration of the statutes: It will improve the efficiency and effectiveness of the current certificate of need process and improve access to affordable quality healthcare for the citizens of the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons applying for a certificate of need or individuals who may benefit from improved access to quality, affordable healthcare.

(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: Persons applying for a certificate of need will encounter a simplified hearing process as well as additional opportunities to qualify for non-substantive review.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: None
   (b) On a continuing basis: None
   (c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certificate of Need application fees.
   (d) 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 modifications to this administrative regulation will not necessitate additional fees or funding.

(8) Provide a statement as to whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees or directly or indirectly 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 United States Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amendment)

907 KAR 1:044. Community Mental health center services.

NECESSITY, FUNCTION, AND CONFORMITY: [EQ-2004-726], Effective July 9, 2004, reorganize 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 has responsibility to administer the Medicaid Program [of-Medicaid Assistance]. KRS 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes [sets forth] the provisions for community mental health center (CMHC) services [relating to services provided by Mental Health Centers for which payment shall be made by the Medicaid Program to both the categorically needy and the medicaid needy].

Section 1. Definition of Psychiatric Nurse. (1) For the purpose of providing Medicaid Program reimbursable services, registered nurses employed by participating mental health centers shall be considered psychiatric or mental health nurses when they meet any of the following criteria.

(a) Master of Science in Nursing (MSN) with specialty in psychiatric/mental health nursing; additional experience is not required; or
(b) Graduate of a four (4) year nursing educational program, with a Bachelor of Science in Nursing (BSN) and with a minimum of one (1) year of experience in a mental health setting; or
(c) Graduate of a three (3) year nursing educational program (diploma graduate), and with a minimum of two (2) years of experience in a mental health setting; or
(d) Graduate of a two (2) year nursing educational program, with an Associate Degree in Nursing (ADN) and with a minimum of three (3) years of experience in a mental health setting; or
(e) Effective July 1, 1989, any level of education with American Nursing Association (ANA) certification as a psychiatric and mental health nurse.

(2) Notwithstanding the preceding, any registered nurse employed by a participating mental health center in Kentucky on June 30, 1981 shall be considered a psychiatric nurse if their employment with the center continues, for the purpose of providing Medicaid Program reimbursable services.
Section 2. Community Mental Health Manual. The Community Mental Health Manual specifies the conditions for participation, services covered, and limitations for the mental health center services component of the Medicaid Program. [The Community Mental Health Manual dated July 1, 1993 is incorporated by reference in this administrative regulation and may be reviewed during regular working hours (8 a.m. to 4:30 p.m. Eastern Standard Time) in the office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.]

Section 3. Covered Services. The following services provided by a participating community mental health center shall be covered if provided in accordance with this administrative regulation and the Community Mental Health Manual, and if they meet all applicable departmental requirements [mental health centers shall be considered covered when rendered within Kentucky Medicaid Program guidelines as shown in the Community Mental Health Manual]:

1. Inpatient services;
2. Outpatient services;
3. Therapeutic rehabilitation services;
4. Emergency services; and
5. Personal care home services.

Section 4. Electronic Documents and Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with requirements established in KRS 369.101 to 369.129 and all applicable state and federal laws and regulations.

(2) A CMHC provider choosing to utilize electronic signatures shall:
(a) Develop and implement a written security policy which shall:
1. Be complied with by each of the provider’s employees, officers, agents, and contractors; and
2. Stipulate which individuals have access to which electronic signatures and password authorization;
(b) Ensure that electronic signatures are created, transmitted, and stored securely; and
(c) Develop a consent form which shall:
1. Be executed and executed by each individual utilizing an electronic signature;
2. Attest to the signature’s authenticity; and
3. Include a statement indicating that the individual has been notified of their responsibility in allowing the use of the electronic signature.

Section 5. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid member based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding a Medicaid member based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:569.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 4. The provisions of this administrative regulation shall be applicable for services provided on or after July 1, 1993.]

SHANNON TURNER, J.D., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: February 10, 2006
FILED WITH LFC: February 10, 2006 at 4 p.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2006. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-E, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen (502-564-6204)

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions regarding community mental health center (CMHC) services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions regarding CMHC services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions regarding CMHC services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the provisions regarding CMHC 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: The amendment to this administrative regulation expands the field of provider types authorized to provide services in community mental health centers and establishes electronic signature requirements.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to enhance member and CMHC access to a broader range of qualified mental health providers and to facilitate the modernization of business practices.
(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 expanding the field of provider types authorized to provide services in community mental health.
(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 expanding the field of provider types authorized to provide services in community mental health.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The affected entities include the 14 community mental health centers as well as the population they serve.

(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: Community mental health centers and the population they serve will experience access to a broader range of mental health professionals.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services anticipates no fiscal impact as a result of this amendment.

(b) On a continuing basis: The Department for Medicaid Services anticipates no fiscal impact as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XXI, Title XXII and state matching funds from general fund and restricted fund appropriations are the funding sources utilized to implement and 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 amendment to this administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Kentucky Children’s Health Insurance Program
(Amendment)

907 KAR 1:715. School-based health services.

RELATES TO: KRS 156.070, 205.520, 605.115, 20 U.S.C. 33
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), EC-2004-726
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.] The Cabinet for Health and Family Services, Department for Medicaid Services has the authority to administer the Medicaid Program. KRS 194A.030 and 194A.050 authorize the Cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid services to Kentucky's indigent citizens. This administrative regulation establishes the provisions relating to school-based health services (SBHS) for which payment shall be made by the Medicaid Program on behalf of Medicaid recipients who are eligible for school-based health services under the Individuals with Disabilities Education Act (20 U.S.C. 33).

Section 1. Definitions. (1) "Admissions and release committee" or "ARC" means a group of individuals required by 707 KAR 1:320 and 34 C.F.R. 300.344, who are responsible for developing, reviewing, and, as necessary, revising the individualized education program for a child with a disability.

(2) "Assistive technology device" means an item, piece of equipment, or product system that is:

(a) Used to increase, maintain, or improve the functional capabilities of a child with a disability; and

(b) Medically necessary to implement the health services in the child's individualized education program.

(3) "Collateral services" means instruction and consultation to a child, the child's family, teacher, or another service provider which is necessary to communicate and enhance the effectiveness of the child's treatment and management programs.

(4) "Department of Education" means the Commonwealth of Kentucky Department of Education.

(5) "IDEA" means the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33.

(6) [6] "Incidental interpreter services" means those interpreter services that are necessary to allow the child to benefit from other covered school-based health services.

(7) [7] "Individualized Education Program" or "IEP" means a written plan for a child with a disability that is developed, reviewed and revised in accordance with 707 KAR 1:320.

(8) [7] "Recipient" means a Medicaid-eligible child under the age of twenty-one (21), including the entire month in which the child becomes twenty-one (21).

(9) [8] "School-based health services" or "SBHS" means medically necessary health services provided for in 707 KAR 1:304 and as specified in an Individualized education program for a child determined to be eligible under the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Chapter 33, and 707 KAR Chapter 1.

Section 2. Provider Requirements. (1) A school district that requests to participate as a school-based health care provider shall be certified by the Department of Education.

(2) The Department of Education may grant certification to a district that agrees to:

(a) Provide services as required by IDEA, 20 U.S.C. 33, and as specified in an approved Individualized education program developed by an ARC that includes a multidisciplinary team of professionals acting within their scope of practice;

(b) Comply with the requirements for provision of services required by IDEA as outlined in 707 KAR 1:320;

(c) Employ or contract with health care professionals who meet the qualifications specified in Section 4 of this administrative regulation;

(d) Provide the Department of Education with a proposed quality assurance outline;

(e) Maintain and submit to the Department of Education all required records and reports to ensure compliance with 20 U.S.C. 33; and

(1) Provide the Department of Education with a list of school-based health services that the school district provides. This list shall contain the following information for employees and contractors providing the services:

1. Name;
2. Credentials;
3. Salary;
4. Fringe benefit percentages; and
5. Contract amounts.

(3) The Department of Medicaid services may grant Medicaid enrollment to a provider who:

(a) Meets the criteria in subsection (2) of this section; and

(b) Is recommended by the Department of Education for certification and enrollment in the Kentucky Medicaid Program as a provider of school-based health services.

(4) A Medicaid school-based provider shall:

(a) Submit to an annual review by the Department of Education to ensure compliance with the standards for continued participation as a Medicaid provider;

(b) Have an on-site survey completed by the Department of Education as necessary to determine compliance with the Medicaid Program;

(c) Take action as specified by the Department of Education to correct a deficiency if found to be in noncompliance with the provision of services outlined in 707 KAR 1:320 or this administrative regulation;

(d) Agree to implement a quality assurance program approved by the Department of Education for the provision of Medicaid-covered services within one (1) year from the date the Department of Education recommends enrollment to the Medicaid Program;

(e) Maintain a current list of school-based health services that the school district provides. The list shall contain the information listed in subsection (2)(f) of this section for an employee or contractor providing the services; and

(f) Maintain records on each Medicaid-eligible recipient who
receives services reimbursed by Medicaid. These records shall: 
1. Identify the child, services performed, and quantity or units
of service; 
2. Be signed and dated by the professional who provided or
supervised the service; 
3. Be legible with statements written in an objective manner; 
4. Indicate progress being made, any change in treatment, and
response to the treatment; and 
5. Be maintained for a minimum of five (5) years plus any addi-
tional time required by law.

Section 3. Covered Services. (1) A school-based health ser-
vice that is included in an authorized IEP and provided in accord-
ance with this administrative regulation shall be considered medi-
cally necessary and shall not be subject to additional Medicaid
prior-authorization requirements.

(2) The following services shall be covered if provided to ad-
dress a medical or mental disability and assist the individual in
benefiting from special education programming which is included,
authorized, and provided in accordance with the individualized
education program:
(a) Nursing;
(b) Audiology;
(c) Speech and language;
(d) Occupational therapy;
(e) Physical therapy;
(f) Mental health;
(g) Incidental Interpreter services provided in conjunction with
another covered service;
(h) Orientation and mobility services;
(i) Respiratory therapy;
(j) Assistive technology devices and appropriate related
evaluations if the devices purchased by the Medicaid Program
become the property of the recipient; and
(k) Transportation with the following limitations:
1. A transportation service shall be limited to transporting a
recipient to receive a Medicaid-covered service at:
   a. A site other than the school building in which the child is
      enrolled for general education purposes; [see
   b. The child's home if the child is a home-bound student and
      receives general education services at home; or
   c. The school building where the child receives the Medicaid-
      covered service. Transportation to the school building from the
      child's home or other site and return transportation from the school
      building to the child's home or other site shall be covered for the
day the Medicaid-covered service is provided at the school build-
ing.
2. A transportation service shall be provided using a type of
   vehicle which:
   a. Meets the specifications established by KRS 156.153, 702
      KAR 5 060, and 702 KAR 5.130; and
   b. Is appropriate for the child's disability; and
3. A transportation service shall not be covered for transporta-
tion:
   a. To and from home and the school; or
   b. Provided by a member of the recipient's household if that
      person is not an employee of the school district.
   (2) A covered service:
   (a) Shall not be limited by site of service;
   (b) May be provided in:
      1. A group of no more than six (6); or
      2. In a one-on-one situation; and
   (c) May include assessment, evaluation, treatment, and collat-
eral components.
   (4) An assessment or evaluation conducted prior to the estab-
lishment of an individualized education program shall be covered if
the individualized education program is subsequently developed
and implemented.

Section 4. Staffing Requirements. School-based health serv-
cees shall be reimbursable if provided by a professional acting
within his scope of practice as defined by state law and as pro-
vided in this section.

(1) A nursing service shall be provided by:
   (a) An advanced registered nurse practitioner with a current
license from the Kentucky Board of Nursing; 
   (b) A registered nurse with a current license from the Kentucky
Board of Nursing;
   (c) A licensed practical nurse with a current license issued by the
Kentucky Board of Nursing, under appropriate supervision and
delegated authority; or
   (d) A health aide if:
      1. The aide is under the supervision of a specific registered
nurse or advanced registered nurse practitioner;
      2. The supervising registered nurse or advanced registered
nurse practitioner has trained the aide for the specific nursing
service for the specific recipient; and
      3. The supervising registered nurse or advanced registered
nurse practitioner has verified in writing that the aide has appro-
prate training and skills to perform the specific service in a safe, ef-
effective manner.

(2) Audiology services shall be provided by an audiologist with
a current license from the Kentucky Board of Speech-Language
Pathology and Audiology.

(3) Speech and language services shall be provided by:
   (a) A speech-language pathologist with:
      1. A current license from the Kentucky Board of Speech-
Language Pathology and Audiology; or
      2. A masters-level certification issued by the Kentucky Educa-
        tion Professional Standards Board; or
   (b) A speech-language pathologist assistant who:
      1. Has:
         a. A current license from the Kentucky Board of Speech-
            Language Pathology and Audiology; or
         b. A baccalaureate-level certification issued by the Kentucky
            Educational Professional Standards Board; and
      2. Is under the supervision of a licensed or certified masters-
level speech-language pathologist in accordance with KRS
334A.003, 334A.080 and 161.052.

(4) Occupational therapy services shall be provided by:
   (a) An occupational therapist with a current license from the
Kentucky Board of Licensure for Occupational Therapy;
   (b) An occupational therapy assistant who is:
      1. Licensed by the Kentucky Board of Licensure for Occupa-
tional Therapy to assist in the practice of occupational therapy; and
      2. Under the supervision of an occupational therapist; or
   (c) An unlicensed occupational therapy aide who:
      1. Provides supportive services to occupational therapists and
        occupational therapy assistants; and
      2. Is under the direct supervision of a licensed occupational
therapist.

(5) Physical therapy services shall be provided by:
   (a) A physical therapist with a current license from the state
Board of Physical Therapy;
   (b) A physical therapist assistant with a current license from the
state Board of Physical Therapy under the supervision of a li-
censed physical therapist;
   (c) A physical therapist with a temporary permit issued by the
state Board of Physical Therapy under the supervision of a li-
censed physical therapist;
   (d) A student of physical therapy under the supervision of a li-
censed physical therapist; or
   (e) A physical therapy aide under the direct on-site supervision of
a:
      1. Licensed physical therapist;
      2. Licensed physical therapist assistant in accordance with the
provisions of 201 KAR 22.053, Section 5;
(5) Mental health services shall be provided by:
   (a) An individual currently licensed by the Kentucky Board of
Examiners of Psychology in accordance with KRS Chapter 319 as a:
      1. Licensed psychologist;
      2. Licensed psychological practitioner;
      3. Certified psychologist with autonomous functioning;
      4. Certified psychologist; or
      5. Licensed psychological associate;
   (b) A school psychologist currently certified by the Kentucky
Education Professional Standards Board;
(c) A school social worker currently certified by the Kentucky Education Professional Standards Board;
(d) A licensed clinical social worker currently licensed by the Kentucky Board of Social Work;
(e) A licensed social worker currently licensed by the Kentucky Board of Social Work;
(f) A certified social worker currently licensed by the Kentucky Board of Social Work;
(g) A guidance counselor currently certified by the Kentucky Education Professional Standards Board;
(h) A psychometrist currently certified by the Kentucky Education Professional Standards Board; or
(i) An advanced registered nurse practitioner who has a specialty area in accordance with the American Nurses’ Association Statement on Psychiatric Mental Health Clinical Nursing Practice and Standards of Psychiatric Mental Health Clinical Nursing Practice in accordance with 201 KAR 20:057;
(7) In order to provide an incidental interpreter service, an interpreter (Incidental interpreter services shall be provided in accordance with the following):
(a) Effective July 1, 2003, interpreters shall be licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing as required by KRS 309 300 to 309.319;
(b) Minimum qualifications after June 1, 2003 shall be as follows:
1. Sign language interpreters shall:
   a. Be certified by the Registry of Interpreters for the Deaf or another national certifying body or
   b. Hold the intermediate level of the Kentucky Interpreting Skills Screening;
2. Cued speech interpreters shall demonstrate ability to perform at Level 2 of the National Cued Speech Association’s certification examination; and
3. Oral interpreters shall be certified by the Registry of Interpreters for the Deaf or another national certifying body;
(c) Orientation and mobility services shall be provided by an orientation and mobility specialist certified by the
   (a) Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP); or
   (b) National Blindness Professional Certification Board (NBPCB);
(8) Respiratory therapy services shall be provided by a practitioner certified by the Kentucky Board of Respiratory Care as required by KRS Chapter 314A.

Section 5. Reimbursement (1) Reimbursement for SBHS shall be provided in accordance with KAR 1:035, Section 5 [6].
(2) School-based health services providers shall certify expenditures of state and local funds to provide covered school-based health services to Medicaid-eligible children as specified in 702 KAR 3.285.

MARK D. BIRDWHISTELL, Secretary
MIKE BURNSIDE, Undersecretary
SHANNON TURNER, J.D., Commissioner
APPROVED BY AGENCY: January 11, 2006
FILED WITH LRC: January 20, 2006 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 21, 2006, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending the hearing shall notify the agency in writing by March 14, 2006, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business March 31, 2005. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street, 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Stuart Owen 502-564-6204
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes Medicaid coverage provisions for school-based health services.
(b) The necessity of this administrative regulation: This administrative regulation enables the Department for Medicaid Services (DMS) to cover school-based health services for Medicaid-eligible children.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS194A.030(2), 194A.050(1), 205.520(3), 205.560, and 605.115 authorize DMS to cover school-based health services for Medicaid-eligible children.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes Medicaid coverage provisions for school-based health services to Medicaid-eligible children.
(e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(f) How the amendment will change this existing administrative regulation: This amendment expands Medicaid transportation coverage to include transportation to and from a child’s school building.
(g) The necessity of the amendment to this administrative regulation: This amendment is necessary to enhance and ensure recipient access to school-based health services.
(h) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by expanding Medicaid transportation coverage for children receiving school-based health services; thus, enhancing recipient access to the services.
(i) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by expanding Medicaid transportation coverage for children receiving school-based health services, thus enhancing recipient access to the services.
(j) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Approximately 96 school districts and 13,300 school-aged children who are Medicaid recipients will be affected by this amendment to the administrative regulation.
(k) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if now, or by the change if it is an amendment: This amendment will enhance recipient access to school-based health services by expanding Medicaid’s transportation coverage to include transportation to and from a child’s school building.
(l) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: School-based health services are provided to Medicaid eligible recipients under a contract with the Kentucky Department of Education (KDE) under a Memorandum of Understanding (MS 02-03-6399). Under the terms of this agreement, KDE will provide the state match to DMS for submitted and reimbursed claims. The terms of this agreement also make this program operational contingent upon funding being available. So, even though this administrative regulation is an expansion of services for this program, there will be no impact on the DMS budget as a result of these changes.
(b) On a continuing basis: School-based health services are provided to Medicaid eligible recipients under a contract with the Kentucky Department of Education (KDE) under a Memorandum of Understanding (MS 02-03-6399). Under the terms of this agreement, KDE will provide the state match to DMS for submitted and reimbursed claims. The terms of this agreement also make this program operational contingent upon funding being available. So, even though this regulation is an expansion of services for this program.
program, there will be no impact on the DMS budget as a result of these changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The sources of revenue to be used for implementing and enforcing this administrative regulation will be federal funds authorized under Title XIX of the Social Security Act, and state revenues provided by the Department for Education.

(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 amendment to this administrative regulation.

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

(9) Tiering: Is tiering being applied? Tiering was not inappropriate 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 would 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.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Policy Development

(Amendment)

921 KAR 4:116. Low Income Home Energy Assistance Program or 'LIHEAP'.

RELATED TO: KRS 194A 010, 194A 060, 194A 070
(194B 010, 194B 060, 194B 070), 45 C.F.R. Part 96 Subpart H, 42 U.S.C. 8621-8627, 9902(2)
STATUTORY AUTHORITY: KRS 194A 050(1) [194B 050(1)], 42 U.S.C. 8621
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 050(1) [194B 050(1)] requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. The Cabinet for Health and Family Services has responsibility under 42 U.S.C. 8621 to administer the Low Income Home Energy Assistance Program and to ensure that the low income households meet the cost of home energy. This administrative regulation establishes the eligibility and benefits criteria for heating and cooling assistance.

Section 1. Definitions. (1) "Agency" means Kentucky Association for Community Action or "KACA", or a local community action agency contracted to provide LIHEAP.

(2) "Annual low income home energy assistance program state plan" means an application prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to [through] 96.87.

(3) "Authorized representative" means the person who presents to an agency a written statement signed by the head of the household, or spouse of the head of the household, authorizing the person to apply on the household's behalf.

(4) "Crisis component" means the component that provides assistance to households that are experiencing a home heating crisis.

(5) "Economic unit" means one (1) or more persons sharing common living arrangements.

(6) "Emergency" means the household is:

(a) Without heat at time of application;
(b) Disconnected from a utility service within forty-eight (48) hours;
(c) Without bulk fuel within four (4) days; or
(d) Without cooling as specified in Section 3 of this administrative regulation.

(7) "Energy" means electricity, gas, and other fuel that is used to sustain reasonable living conditions.

(8) "Gross household income" means all earned and unearned income, including lump sum payments received by a household during the calendar month preceding the month of application.

(9) "Heating season" means the period from October through April.

(10) "Household" means an individual or group of individuals who are living together in the principal residence as one (1) economic unit and who purchase energy in common.

(11) "Household demographics" means an applicant's:
(a) Address;
(b) Household composition that includes:
1. Size;
2. Age group;
3. Relationship to applicant;
4. Sources of income;
5. Liquid assets;
6. Type of housing; and
(c) Heat source

(12) "Level of poverty" or "poverty level" means the degree to which a household’s gross income matches the official poverty income guidelines published annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(13) "Life-threatenin g situation" means a household is or shall be without heat or cooling within eighteen (18) hours and temperatures are at a dangerous level as determined by the National Weather Service.

(14) "Principal residence" means the place:
(a) Where a person is living voluntarily and not on a temporary basis;
(b) An individual considers home;
(c) To which, when absent, an individual intends to return; and
(d) Is identifiable from another residence, commercial establishment, or institution.

(15) "Subsidy component" means the heating component that provides an eligible household with:
(a) A one (1) time annual payment to the household's energy provider; or
(b) Payment to a landlord, if utilities are included in the rent.

Section 2. Application. (1) A household or authorized representative applying for LIHEAP shall provide to the agency the following:

(a) Proof of household income;
(b) Statement of liquid resources;
(c) Most recent: 1. heating bill;
2. Cooling bill; or
3. Verification that heating or cooling is included in the rent;
(d) Statement of household demographics; and
(e) A Social Security number, or a permanent residency card, for each household member.

(2) An application shall not be considered complete until the required information, as specified in subsection (1) of this section, is received by the agency.

Section 3. Eligibility Criteria. (1) Income. Gross household income shall be at or below 130% [44%] percent of the official poverty income guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(2) Liquid assets.

(a) The household shall have total liquid assets at time of application of not more than:
1. $2,000 [$4,500- or]
2. $3,000 if at least one (1) member in the household is:
a. Age sixty (60) or older or
b. Disabled; or
3. $4,000, if a member of the household has an illness which requires liquid resources to be accessed regularly for medical and
living expenses.
(b) An excluded asset shall be:
1. A vehicle;
2. A household or personal belonging;
3. A principal residence;
4. Cash surrender value of an insurance policy;
5. A prepaid burial policy;
6. Real property; and
7. Cash on hand or in a bank account if the cash is considered as income as specified under subsection (1) of this section.
(3) The household shall be responsible for paying:
(a) Home heating;
(b) Cooling costs; or
(c) Heating or cooling costs as an undesignated portion of the rent.
(4) Crisis component. In addition to meeting the criteria in subsections (1) through (3) of this section, an applicant shall:
(a) Be within four (4) days of running out of fuel, if propane, fuel oil, coal, wood, or kerosene is the primary heat source; or
(b) Have received a past-due or disconnect notice, if natural gas or electric is the primary heat source, or
(c) Have received a notice of eviction for nonpayment of rent, if home heating cost is included as an undesignated portion of the rent.
(5) Summer cooling component. In addition to meeting the criteria in subsections (1) through (3) of this section, to be eligible to receive a window air conditioner unit, an applicant shall:
(a) Be without an adequate source of cooling; and
(b) Have a household member who:
1. Has a health condition that requires cooling to prevent further deterioration, verified by a physician’s statement prepared on the physician’s letterhead;
2. Is sixty-five (65) years of age or older; or
3. Is under the age of six (6) years.
Section 4. Benefits. (1) For a subsidy component, payment to the household's heating fuel provider shall be made for the full benefit amount as follows:
(a) Benefits shall be determined prior to implementation of the component, based upon calculations from fuel usage data and from an average heating season energy cost for the six (6) primary heating fuels.
(b) The amount of benefits shall be based upon household income and type of heating fuel used.
(c) A household with the lowest income and highest average heating season fuel cost shall receive highest benefits.
(d) Benefits shall be a percentage of the average annual heating season energy cost of the primary heating fuel.
(e) A household living in federally assisted housing or receiving a utility allowance shall be eligible for lower benefits.
(2) For a crisis component, benefits shall be the minimum amount necessary to alleviate a heating crisis. A household living in federally assisted housing may be eligible.
(a) A benefit may be:
1. Fuel or other energy source for heating;
2. A space heater loaned on a temporary basis until:
   a. Fuel is delivered;
   b. Another resource is located to alleviate the crisis;
   c. A blanket or sleeping bag; or
   d. Emergency shelter.
(b) In determining the minimum amount of assistance, an agency shall take into consideration a direct subsidy for payment of utility cost received by the household from another program.
(c) A household may receive assistance more than once (1) time, but shall not receive more than the maximum allowable for the primary heating fuel, minus a required copayment. The maximum allowable benefit shall equal cost for delivery up to:
1. Two (2) tons of coal;
2. Two (2) cords of wood;
3. 200 gallons of propane;
4. 200 gallons of fuel oil;
5. 200 gallons of kerosene; or
6. $250 ($425) for natural gas or electric.
(d) A household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable payment for the primary heating fuel.
(e) An eligible household, including a household residing in:
1. Subsidized housing, with an income at or above seventy-five (75) percent of the poverty level shall make a copayment equal to a percentage of the benefit amount needed to relieve the crisis.
2. Subsidized housing and receiving a utility allowance shall pay a higher copayment amount.
(f) The copayment amount shall be based on housing type and the household’s percentage of poverty, as follows:

<table>
<thead>
<tr>
<th>Percent of Poverty</th>
<th>Copayment Percentage of Benefit for Households Residing in Nonsubsidized Housing</th>
<th>Copayment Percentage of Benefit for Households Residing in Subsidized Housing</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-74%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>75-100%</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>101-130%</td>
<td>15%</td>
<td>20%</td>
</tr>
<tr>
<td>130%+ (Maximum)</td>
<td>15%</td>
<td>20%</td>
</tr>
</tbody>
</table>

(3) For cooling component benefits, a household shall be eligible for:
(a) A one (1) time annual payment to:
1. The household’s electric utility provider;
2. The landlord, if the cost of cooling is included as an undesignated portion of the rent; or
3. Purchase a window air conditioner unit, as described in Section 5(a) of this administrative regulation;
(b) Benefits based on:
1. The household’s level of poverty;
2. Subsidized housing with:
   a. Zero percent to seventy-four (74) percent of poverty receiving up to fifty (50) dollars; or
   b. Seventy-five (75) percent to 130 [440] percent of poverty receiving up to seventy-five (75) dollars;
3. Nonsubsidized housing with:
   a. Zero percent to seventy-four (74) percent of poverty receiving up to $175; or
   b. Seventy-five (75) percent to 130 [440] percent of poverty receiving up to $125.

Section 5. Benefit Delivery Methods. (1)(a) Payment under a subsidy component shall be authorized by a one (1) party check made payable to the household’s:
1. Energy provider;
2. Landlord, if the cost of heating is included as an undesignated portion of rent.
(b) At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider if heating services were provided by more than one (1) provider. However, the total amount of the payments shall not exceed the maximum for the primary source of heating.
(2) For a crisis component, a direct cash payment shall not be made to the recipient. A payment shall be authorized to:
(a) An energy provider by a one (1) party check upon delivery of fuel, restoration, or continuation of service;
(b) A vendor who supplies a heater, blanket, or emergency lodging;
(c) A landlord, if heating cost is included in the rent.
(3) For the cooling component, cash benefits shall be paid to:
(a) Household’s electric utility provider;
(b) Landlord, if cooling cost is included in the rent.

Section 6. Right to a Fair Hearing. (1) An individual who has been denied assistance or whose application has not been acted upon in accordance with time standards in Section 8 of this administrative regulation shall be provided an administrative review by the agency.
(2) An individual dissatisfied with the results of an administrative review may request a hearing to be held in accordance with 421 KAR 2:055.

Section 7. Vendor Selection for Nonmetered Fuel Provider. (1) Subsidy component.
(a) An agency shall solicit vendors for all nonmetered fuels and
shall establish an approved vendor listing.
(b) The agency shall place an advertisement for interested vendors in a local newspaper with the largest circulation and shall contact all vendors in good standing that participated in the program during the last contract period.
(c) A potential vendor shall provide the agency with a fixed price in gallons for kerosene, propane or fuel oil, cords for wood, or tons for coal, delivered or picked up by the client.
(d) A prospective vendor shall:
1. Allow agency and authorized federal or state representatives to inspect records upon request;
2. Maintain records to financial transactions regarding LIHEAP for a period of three (3) years;
3. Inform the agency if information is received that a household has obtained a benefit by misrepresentation;
4. Provide fuel as specified and at the price quoted;
5. Comply with federal and state law pertaining to equal employment opportunity; and
6. Comply with billing procedures established by the agency.
(e) A household shall select a vendor from the agency's approved vendor list.
(2) Crisis component.
(a) Each agency shall perform a local price survey for each bulk fuel type and shall establish a reasonable price for quality of fuel, delivery and on-site pick-up for each fuel type.
(b) Each agency shall maintain a list of approved vendors and prices throughout the crisis component.
(c) A household may use its regular vendor if the price does not exceed the established price for that fuel type and mode of delivery.
(d) For a household with no regular vendor, the agency shall select from its vendor list the lowest priced vendor capable of providing fuel within:
   1. Eighteen (18) hours for a life-threatening situation; or
   2. Forty-eight (48) hours for an emergency situation.

Section 8. Time Standards. (1) Under a subsidy component, an eligibility determination shall be made by an agency within five (5) working days after receipt of information required by Section 2 of this administrative regulation.
(2) Under a crisis or cooling component, benefits shall be authorized so that:
(a) Crisis situation is resolved within forty-eight (48) hours; or
(b) Life-threatening situation is resolved within eighteen (18) hours.
(3) Under a subsidy, crisis or cooling component, an applicant shall have five (5) working days from the date of application to provide required information to an agency as specified in Section 2 of this administrative regulation, or the application shall be denied.

Section 9. Effective Dates. (1) Implementation and termination dates for LIHEAP shall depend upon the availability of funds.
(2) If additional federal funds are made available, LIHEAP may be reactivated after termination under the same terms and conditions as shown in this administrative regulation.

Section 10. Allocation of Federal Funds. (1) An amount of federal funds sufficient to provide benefits to eligible households that apply during the subsidy application period shall be reserved for a subsidy component.
(2) The balance of benefit funds for LIHEAP shall be reserved for a crisis component as follows:
(a) Benefit funds reserved for the crisis component shall be allocated based upon each local administering agency's percentage of the statewide population at or below 100 percent of the poverty level.
(b) $400,000 of crisis benefit funds shall be identified as contingency funds and allocated to agencies as needed.
(c) $25,000 or more shall be reserved for the Preventive Assistance Program to assist families with an energy payment not to exceed $300 per month if the payment:
   (a) Prevents the removal of a child from the family; or
   (b) Assists in reuniting a child with the family.

Section 11. Energy Provider Responsibilities. A provider accepting payment from LIHEAP for energy or services provided to an eligible recipient shall comply with the following provisions:
(1) Reconnection of utilities and delivery of fuel during a crisis component shall be accomplished upon certification for payment.
(2) A household shall be charged, in the normal billing process, the difference between actual cost of the home energy and amount of payment made through this program.
(3) A LIHEAP recipient shall be treated the same as a household not receiving benefits.
(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided.
(5) A landlord shall not increase the rent of a recipient household due to receipt of a LIHEAP payment.

Section 12. Annual Plan. A copy of the state's annual Low Income Home Energy Assistance Program state plan prepared in accordance with 42 U.S.C. 8624(c) and 45 C.F.R. Part 96, Subpart H, sections 96.83 to 96.87 may be obtained by a request in writing made to the Commissioner of the Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.

TOM EMBERTON, JR., Commissioner
MIKE BURNSIDE, Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: January 31, 2006
FILED WITH LPC: February 1, 2006 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 21, 2006, 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 March 14, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments to: CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counselor, 275 East Main Street - SW-5, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: David Gayle, DCBS Regulation Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the eligibility and benefits criteria for the Low Income Home Energy Assistance Program (LIHEAP) in Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the eligibility and benefits criteria for Kentucky's LIHEAP.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194.050, which authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to qualify for federal funds and to cooperate with other state and federal agencies. The cabinet has responsibility under 42 U.S.C. 8621 to implement the LIHEAP.
(d) How this regulatory currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by implementing eligibility and benefits criteria for LIHEAP.
(2) If this is an amendment to an existing administrative regu
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(1) How the amendment will change this administrative regulation:
The amendment to this administrative regulation modifies the maximum utility benefit payable under the LIHEAP crisis component from $125 to $250 and increases the gross household income allowable under the LIHEAP from 110% to 130% of the Federal Poverty Guidelines and allowable liquid assets from $1,500 to $2,000. The amendment also provides an allowance for additional liquid assets (i.e., $3,000) in the event a household member is disabled or age 60 or older.

(2) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary as a result of HB 283 2006 GA, which allocated an additional ten million dollars of State General Funds to the LIHEAP crisis component. The increase in utility benefit and income threshold is necessary to respond to rising heating costs and the resulting impact on a larger segment of Kentucky's population. The increase in utility benefits will ensure that the LIHEAP crisis component will better meet the actual heating costs seen by eligible low-income households as a result of recent increases in fuel costs. The increase in income threshold will allow the cabinet and its partners, Kentucky's Community Action Network, to offer assistance to additional vulnerable individuals and families, including those who may be leaving welfare to work, have a household member with a disability, or are elderly.

(3) How the amendment conforms to the content of the authorizing statute: The amendment conforms to the content of the authorizing statute through its modification of eligibility criteria (i.e., slight increase to the gross income level) and the increase in the crisis component utility benefit under LIHEAP, which better reflect current heating fuel costs.

(4) How the amendment will assist in the effective administration of the statute: The amendment will assist in the effective administration of the statute by allowing the cabinet and its partners, in their implementation of LIHEAP, to serve more vulnerable households and increase the utility benefit under the crisis component.

(5) List the type and number of individuals, business organizations, or state and local governments affected by this administrative regulation: The cabinet holds a master agreement with the Kentucky Association for Community Action, Inc. which subcontracts with the 22 community action agencies to provide LIHEAP benefits to Kentucky's 120 counties. Last year, Kentucky served approximately 200,000 households under the LIHEAP. Of those 200,000, approximately 109,667 households were served under the LIHEAP subsidy component, and 97,752 were served under the LIHEAP crisis component. This amendment and the additional funds provided under HB 283 2006 GA will allow the cabinet and its partners to serve an additional 50,000 households under the crisis component in 2006.

(6) 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 Community Action Network will be able to extend services to more low-income households, thereby better safeguarding households who are transitioning from welfare to work, whose household member has a disability or who are elderly. In addition, the increase in utility benefits available through the LIHEAP crisis component better reflect actual heating fuel costs seen in winter 2006.

(7) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: HB 283 allocates $10,000,000 in additional funding for the LIHEAP crisis component.
(b) On a continuing basis: The U.S. Department of Health and Human Services allocates annual LIHEAP funds. The cabinet will administer and implement LIHEAP in Kentucky within those and any state appropriations.

(8) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation, particularly the LIHEAP crisis component, in winter 2006 will be funded through a mix of existing federal funds and the additional funds provided through HB 283. In subsequent years, the imple-

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 8621
2. State compliance standards. KRS 194A.050
3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 8621
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. N/A
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(New Administrative Regulation)

103 KAR 1:040. Waiver of penalties.

RELATES TO: KRS 131.010(9), 131.030(3), 131.081(6), 131.175, 131.180, 131.440(3)(d), 133.180, 133.220, 138.885, 139.185, 141.180(7), 141.180(1), 141.340(2), 141.990, 142.357, 143.085.

STATUTORY AUTHORITY: KRS 131.150(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.175 authorizes the Department of Revenue to promulgate administrative regulations concerning waiver of penalties. This administrative regulation establishes the criteria used to determine if the taxpayer has demonstrated reasonable cause to waive penalties.

Section 1. Enumeration of Circumstances Constituting Reasonable Cause. The Department of Revenue shall employ the following criteria to determine if the taxpayer has demonstrated reasonable cause to waive penalties:

(a) Erropeous advice by Department of Revenue, if in accordance with KRS 131.081(6);

(b) Death or serious illness of taxpayer or immediate family - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer or a member of the taxpayer's immediate family. If the taxpayer is an individual, the death or serious illness shall be that of an individual having sole authority to execute the return or a member of the individual's immediate family. The following factors shall be considered in a determination of the applicability of this section:
(a) Relationship of parties involved;
(b) Date of death;
(c) Date and nature of serious illness;
(d) Length of time from the date of death or serious illness to the date prescribed by law for filing a return, including any extension granted;
(e) Explanation of how the event prevented compliance; and
(f) Explanation of other business obligations that were impaired;

(c) Death or serious illness of the taxpayer's tax return preparer - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the death or serious illness of the taxpayer's tax return preparer. The following factors shall be considered in a determination of the applicability of this section:
(a) Name of preparer and date of death;
(b) Date and nature of serious illness;
(c) Length of time from the date of death of the tax preparer to the date prescribed by law for filing a return, including any extension granted; and
(d) Explanation of how the death or serious illness prevented compliance.

(d) Destruction or unavailability of taxpayer records by a catastrophic event - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the destruction or unavailability of the taxpayer's records by a catastrophic event. The following factors shall be considered in a determination of the applicability of this section:
(a) Date and description of catastrophic event;
(b) Supporting documentation such as a copy of the police, fire, or insurance report;
(c) Explanation of how the destruction or unavailability of records prevented compliance; and
(d) Explanation of all other means explored to secure needed tax information.

(e) Inability to obtain records in custody of third party - Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by the inability to obtain taxpayer's records in the custody of a third party. The following factors shall be considered in a determination of the applicability of this section:
(a) Unfamiliarity of the taxpayer with the tax laws, and actual reliance by the taxpayer on the advice of the tax advisor;
(b) Supporting documentation of full disclosure by the taxpayer.
of all relevant facts provided to the tax advisor or other professional retained and advice received, including:

1. A copy of the advice requested;
2. A copy of the advice provided; and
3. A statement from the tax advisor explaining the circumstances; and
(c) Exercise of reasonable care and prudence by the taxpayer in determining whether to secure further advice.

(9) Reliance on substantial legal authority. Penalties may be waived if the delay or failure to file a return or report or pay a tax was caused by reliance on substantial legal authority for the particular tax treatment of an item of gross income, deduction, exemption, credit, or basis. The following factors shall be considered in a determination of the applicability of this section:
(a) Actual reliance by the taxpayer at the time of failure to file the return or report or to pay the tax; and
(b) Conspicuous, full disclosure by the taxpayer in the return, if a return was filed, of the position that is contrary to the Department of Revenue's position, including all copies of or citation to the Internal Revenue Code, the Kentucky Revised Statutes, final and temporary regulations of the Internal Revenue Service and the Department of Revenue, Revenue Rulings, Revenue Procedures, and Private Letter Rulings of the Internal Revenue Service, case law interpreting the previous items, or any other relevant legal authority which provides that the tax treatment is more likely than not correct.

(10) Tax modernization. For taxable periods beginning after December 31, 2004 and before January 1, 2006, the penalty for any declaration underpayment, as provided in KRS 131.180 and 141.590(3) shall be waived if the declaration underpayment is directly related to the changes to the tax laws pursuant to 2005 Ky. Acts ch. 168, and the taxpayer made a good faith effort to comply with 2005 Ky Acts ch. 168.

Section 2. Taxpayer's Support for Reasonable Cause (1) Responsibility for request - The taxpayer shall:
(a) Request reduction or waiver of any penalty, in writing; and
(b) Provide all supporting documentation necessary to substantiate reasonable cause.

(2) Time of request - A taxpayer may attach a statement requesting waiver for reasonable cause to a return or may request waiver after notice of assessment.

(3) Request by representative of taxpayer - A request from a taxpayer's representative shall be considered a request by the taxpayer if the taxpayer has provided a properly signed power of attorney or the Department of Revenue is satisfied by any other written statement that the representative has been authorized to act for the taxpayer.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 29, 2006 at 1 p.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 March 22, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 March 31, 2006. Send written notification of intent to hear at the public hearing or written comments on the proposed regulation to:
CONTACT PERSON: Contact persons: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1059, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 584-9565.
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 131.130(1), 141.180, and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation establishes the criteria used to determine if the taxpayer has demonstrated reasonable cause to waive penalties.
(b) The necessity of this administrative regulation: KRS 131.175 authorizes the Department of Revenue to promulgate administrative regulations concerning waiver of penalties.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 131.175 authorizes the Department of Revenue to promulgate administrative regulations concerning waiver of penalties.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: 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, state and local governments affected by this administrative regulation: This administrative regulation will affect any taxpayer assessed with penalties that wishes to have those penalties waived.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation provides concrete guidelines for when waiving penalties is appropriate and what kind of information the taxpayer will need to produce to have penalties waived.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: 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, because the requirements of this regulation apply to every taxpayer, under the principles of uniformity of taxation.
Section 1. Policies and Circulars. The following policies and circulars of the Department of Revenue are withdrawn and shall not be effective or recognized for any purpose; (1) 10C030 Kentucky Tax Registration Application; (2) 40C003 Taxation of Federal and Certain Nonfederal Obligations and Their Income for Kentucky Income and Intangible Property Tax Purposes (rev 4/12/2); (3) 10C001 Tax Provisions of the Enterprise Zone Law (rev 1/1/01); (4) 62C077 Sheriff's Annual Settlement for State Taxes (rev 1/15/01); (5) 62C112 Duties in Taxing Omitted Real and Tangible (rev 12/1/01); (6) 51C001 General Information (rev 12/1/96); (7) 51C001-S1 Application to Grocery Stores (rev 12/96); (8) 51C001-S2 Application to Restaurants (rev 12/96); (9) 51C001-S3 Application to Service Stations (rev 7/99); (10) 51C001-S4 Application to Service Enterprises and Persons Rendering Professional Services (rev 7/99); (11) 51C001-SS Application to Hotels and Motels (rev 6/00); (12) 51C001-S8 Application to Admissions (rev 7/92); (13) 51C001-S7 Application to Wholesale Operations (rev 7/90); (14) 51C001-S8 Application to building Suppliers (rev 7/90); (15) 51C001-S12 Application to Automotive Supply Wholesalers (rev 7/90); (16) 51C001-S13 Application to Manufacturers (rev 7/90); (17) 51C004 Exemption of Residential Utilities (rev 7/1/92); (18) 51C005 Application to Radio and Television Stations (rev 7/1/90); (19) 51C006 Exemption of Pollution Control Facilities (rev 7/1/84); (20) 51C007 Application to Electric Utility Companies - Uniform Standard Accounts; (21) 51C008 Application to Gas Utility Companies - Uniform Standard Accounts; (22) 51C009 Improper Use of Resale Certificates (rev 9/1/91); (23) 51C010 Application to Mines Suppliers and Operators - Mining Supplies (rev 8/8/94); (24) 51C011 Application to the Horse Industry (rev 7/1/90); (25) 51C012 Application of Sales and Use Tax to Property Used in the Publication of Newspapers (rev 9/1/91); (26) 51C013 Oil and Gas Machinery, Equipment and Supplies (rev 7/1/90); (27) 51C018 Application to Aircraft Dealers (rev 12/1/84); (28) 51C019 Application to Carnival and Circus Operations and Concessionaires (rev 8/1/92); (29) 51C020 Application to Repairers and Reconditioners of Tangible Personal Property Who Sell Service Maintenance and Extended Warranty Contracts (rev 7/1/90); (30) 51C025 Use Tax Due on Out-of-state Purchases by Individuals (rev 4/1/02); (31) 51C030 Proper Application of Sales and Use Tax by Kentucky Educational, Charitable and Religious Institutions (rev 7/1/92); (32) 51C035 Application of Sales Tax to Cigarette Sales (rev 7/1/96); (33) 51C045 Application of Use Tax to Tangible Personal Property by Kentucky Businesses (rev 7/1/96); (34) 55C001 General Provisions (rev 1/1/02); (35) 55C002 Important Changes in Requirements for Reporting Coal Severance Tax Transactions; (36) 56C001 Tax on Gross Value of Natural Gas and Natural Gas Liquids (rev 12/1/92); (37) 56C002 Tax on Gross Value of Minerals (rev 8/1/94); (38) 56C003 Production or Transportation of Crude Petroleum Oil; (39) 40C003 Taxation of Federal and Certain Nonfederal Obligations and Their Income for Kentucky Income and Intangible Property Tax Purposes (rev 8/1/91); (40) 40C005 Kentucky Depreciation System - Corporate and Noncorporate (rev 12/1/90); (41) 40C010 Reporting Requirements for Nonresident Partners or S Corporation Shareholders' Combined Kentucky Income Tax Return; (42) 40C030 Corporate and Individual Income Tax - Special Reporting Procedures (rev 12/1/97); (43) 41C020 Safe Harbor or Finance Leases; (44) 42C005 Reciprocity - Income Tax Credit; Nonresidents - Exemption from Taxation (rev 10/1/88); (45) 42C010 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Industrial Revitalization Authority (S.B. 315) (rev 7/1/83); (46) 40C030 Corporate and Individual Income Tax - Special Reporting Procedures (rev 12/1/97); (47) 41C020 Safe Harbor or Finance Leases; (48) 42C005 Reciprocity - Income Tax Credit; Nonresidents - Exemption from Taxation (rev 10/1/88); (49) 42C010 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Industrial Revitalization Authority (S.B. 315) (rev 7/19/93); (50) 42C011 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Jobs Development Authority (S.B. 314) (rev 7/19/93); (51) 42C012 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Rural Economic Development Authority (KRS 154.22-010 through 154.22-080) (rev 12/1/96); (52) 42C013 Kentucky Withholding Tax Reporting Procedures Under the Kentucky Industrial Development Act (KRS 154.28-010 through 154.28-100); (53) 73C455 Cigarette Subjector Licenses (rev 12/1/98); (54) 73C456 Cigarette Licensing Requirements (rev 12/1/00); (55) 73C458 Unstamped Cigarettes Damaged in Transit; (56) 73C203 State Taxes on Legal Processes and Instruments; (57) 72C051 Motor Fuel's Tax Refund Invoices and Credits to Licensed Dealers (rev 10/4/95); (58) 72C079 Purchases of Gasoline or Special Fuel by Licensed Dealers (rev 10/4/95); (59) 72C142 Dealer Nonhighway Special Fuels Use Deduction (rev 12/1/90); (60) 71C169 Usage Tax on Forced Registration; (61) 71C172 Trade-in Allowance (rev 12/1/90); (62) 71C176 Usage Tax on "For Sale and Transfer" Registration; (63) 71C179 Redeemed Motor Vehicles - No Usage Tax Due (rev 12/1/88); (64) 71C183 Sales Tax Credit on Initial Motorcycle Registration; (65) 71C189 Credit for Similar Taxes Paid to Another State; (66) 10P010 Due Dates for Payment of Tax; (67) 10P011 Records Retention Requirements; (68) 62P018 Savings Accounts (rev 12/1/88); (69) 62P030 Value of Notes and Mortgages; (70) 62P025 Uncollectible Notes; (71) 62P030 Accounts Receivable (rev 12/1/88); (72) 62P050 Bonds; (73) 62P055 Partnership Notes Receivable; (74) 62P070 State and Municipal Bonds of Kentucky;
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(75) 62P072 Leasehold Interests;
(76) 62P076 Places of Burial;
(77) 62P080 Bonds Issued by a Private Educational Institution;
(78) 62P090 Individual Right or Interest in Kentucky Retirement or Profit - Sharing Plans (rev 12/1/96);
(79) 62P105 Vendor's Lien;
(80) 62P110 Mortgage on Property in Another State;
(81) 62P130 Intangible Trust Property;
(82) 62P140 Accounts Receivable (rev 11/1/00);
(83) 62P150 Exemption of Public Property Used for Public Purposes;
(84) 62P160 Institutions for Public Charity;
(85) 62P170 Fraternal Organizations;
(86) 62P180 Boy and Girl Scout Organizations (rev 9/1/87);
(87) 62P190 Hospitals;
(88) 62P200 Educational Institutions;
(89) 62P210 Educational Institutions;
(90) 62P215 Public Libraries;
(91) 62P240 Homestead Exemption - Disability (rev 12/1/00);
(92) 62P260 Mining Equipment;
(93) 62P280 Ready-mix Concrete Units;
(94) 51P016 Sewage Treatment Plant;
(95) 51P017 Water Treatment Plant;
(96) 51P018 Scoop Loaders and/or Front End Loaders;
(97) 51P020 Energy and Energy - Producing Fuels, Greenhouses;
(98) 51P041 Good Faith When Retailer Has Accepted Exemption; Certificate for Property Not Normally Utilized in Purchaser's Type of Business (rev 7/1/90);
(99) 51P042 Good Faith and the Agricultural Exemption Certificate (rev 7/1/90);
(100) 51P050 Hydraulic Fluid (rev 7/1/90);
(101) 51P070 Industrial Supply, Diesel Fuel (rev 7/1/90);
(102) 51P090 Feed for Farm Work Stock;
(103) 51P100 Salt, Potash and Mineral Blocks;
(104) 51P105 Medicine for Livestock and Poultry;
(105) 51P110 Sale of Dirt and/or Sod;
(106) 51P115 Sales Made by Master Commissioners, Sheriffs, Administrators of Estates, etc.;
(107) 51P117 Sales Made by the State (rev 7/1/90);
(108) 51P120 Agricultural Lime Haulers;
(109) 51P130 Farm Machinery;
(110) 51P135 Three - and - Four - Wheel Dirt Bikes;
(111) 51P140 Aviation Gasoline and Special Fuels;
(112) 51P150 Goose - Neck Trailers;
(113) 51P151 Utility Trailers;
(114) 51P160 Mini - bikes, Dirt Bikes;
(115) 51P165 Locomotives and Rolling Stock;
(116) 51P170 Computer Software (rev 7/1/90);
(117) 51P171 Custom Computer Software;
(118) 51P172 Modification of Computer Software;
(119) 51P180 Word Processing;
(120) 51P190 Alteration Charges;
(121) 51P200 Monogramming Charges;
(122) 51P210 Embroidering Charges;
(123) 51P215 Fabric Protection Charges;
(124) 51P220 Photo Finishing;
(125) 51P230 Custom Sawing;
(126) 51P245 Mobile Homes;
(127) 51P250 Sale of Gold and Silver Coins or Gold and Silver Bullion;
(128) 51P261 Water Haulers (rev 7/1/90);
(129) 51P265 Security Light Rentals to Residential Customers;
(130) 51P270 Sale Made by Catalog Departments;
(131) 51P275 Catalogs Purchased From an Out-of-state Retailer (rev 7/1/90);
(132) 51P280 Barber and Beauty Shops (rev 7/1/90);
(133) 51P290 Stores' or Manufacturers' Coupons (rev 7/1/90);
(134) 51P301 Oxygen Tank Rental;
(135) 51P310 Prosthetic Devices and Physical Aids (rev 12/1/86);
(136) 51P320 Eye Glasses and Contact Lenses;
(137) 51P340 Carryout Meals Sold by Delicatessens;
(138) 51P341 Retailers of Food for Human Consumption (rev 12/1/96);
(139) 51P345 Restaurant Tax (rev 7/1/90);
(140) 51P350 Dietary Supplements (rev 12/1/96);
(141) 51P360 Garden Seed (rev 12/1/56);
(142) 51P368 Wall-to-wall Carpet;
(143) 51P389 Construction Equipment Brought Into Kentucky (rev 7/1/90);
(144) 51P390 Construction Contracts With Exempt Institutions;
(145) 51P375 Construction Contracts With the Federal Government;
(146) 51P377 Pollution Control Facilities (rev 11/6/94);
(147) 51P380 Camping Fees;
(148) 51P390 Admissions to Historical Sites;
(149) 51P395 Admissions to Boxing and Wrestling Matches;
(150) 51P396 Admissions to Seminars;
(151) 51P400 Donations;
(152) 51P410 Transit Room Tax (rev 7/1/90);
(153) 51P411 Thirty (30) Day Accommodations (rev 7/1/52);
(154) 51P412 Short-term Apartment Rentals (rev 7/1/92);
(155) 51P415 Nonresident Educational, Charitable, and Religious Institutions (rev 6/15/88);
(156) 51P420 Agreement to Extend Statute of Limitations (rev 6/17/94);
(157) 51P430 Common Carriers;
(158) 51P431 Pickup and Delivery Charges;
(159) 51P432 Handling Charges;
(160) 51P440 Charges for Cable Television Equipment and Service;
(161) 51P441 Construction Information Service;
(162) 51P442 Rating Services;
(163) 51P444 Blind Vendors;
(164) 51P445 Prizes;
(165) 51P550 Leases and Rentals - Delivery Charges;
(167) 51P551 Leases and Rentals of Equipment With an Operator (rev 1/1/94);
(168) 51P552 Charges Made by Caterers for Rental of Tangible Personal Property;
(169) 51P555 Leases or Rentals of Cranes With and Operator;
(170) 51P010 Definition of Natural Resources;
(171) 51P015 Definition of Taxpayer;
(172) 51P020 Exemption of Agricultural Limestone (rev 12/1/98);
(173) 51P030 Taxation of Oil Shale;
(174) 51P040 Agreement to Extend Statute of Limitations (rev 6/17/94);
(175) 51P100 Liability of Landowner (Lessor);
(176) 41P010 Cooperatives;
(177) 41P020 Short Period Return or Change In Tax Period Resulting from Change In Ownership;
(178) 41P030 Six (6) Year Statute of Limitations;
(179) 41P040 Declaration of Estimated Tax Penalty;
(180) 41P070 Income and Deductions (rev 8/1/50);
(181) 41P071 Claim of Right - Section 1341 Internal Revenue Code;
(182) 41P060 Coal Royalty Income;
(183) 41P090 Jobs Tax Credit;
(184) 41P100 Deductibility of State Taxes;
(185) 41P110 Deductibility of State Taxes;
(186) 41P120 Deductibility of State Taxes;
(187) 41P121 Deductibility of State Taxes;
(188) 41P125 Windfall Profit Tax;
(189) 41P130 Taxation of Income from Activities on the Outer Continental Shelf (rev 9/21/80);
(190) 41P140 Subpart F Income;
(191) 41P158 Expenses Related to Nonbusiness or Nontaxable Income;
(192) 41P140 First - Year Net Operating Loss;
(193) 41P170 Sales Factor;
(194) 41P180 Property Factor;
(195) 51P190 Net Rental Income;
(196) 51P200 Partnership and Joint Venture Income Classified Business Income;
(197) 41P210 Business Apportionment Factor for Corporations Reporting Income on Completed Contract Method;
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(186) 41P220 Separate Accounting;
(199) 41P230 Financial Organizations;
(200) 41P240 Homeowners Associations;
(201) 41P250 Taxation of Foreign Sales Corporations and Domestic International Sales Corporations;
(202) 41P260 Corporate Distributions, Liquidations and Reorganizations (rev 9/14/90);
(203) 41P500 Agreement to Extend Statute of Limitations (rev 6/17/94);
(204) 41P510 Final License Tax Return;
(205) 41P520 Capital (rev 12/1/95);
(206) 41P530 Borrowed Moneys;
(207) 41P540 Unrealized Leasehold Income;
(208) 41P550 Borrowed Moneys;
(209) 41P560 Outer Continental Shelf (rev 9/21/89);
(210) 41P570 Corporation License Tax Apportionment Factor;
(211) 41P580 Sales Factor;
(212) 41P590 Homeowners Associations;
(213) 41P600 Real Estate Investment Trust (rev 3/14/94);
(214) 42P010 Statute of Limitations;
(215) 42P020 Waiving Estimated Tax Penalty (rev 12/1/88);
(216) 42P030 Estimated Tax Penalty;
(217) 42P040 Estimated Tax Penalty;
(218) 42P050 Credit for Tax to a Foreign Country;
(219) 42P060 Basis of Property Acquired from a Decedent;
(220) 42P065 Joint Estimated Tax Payments - Divorced Taxpayers;
(221) 42P080 Military Personnel;
(222) 42P110 Military Resident - Nonresident Spouse;
(224) 42P130 Division of Income;
(225) 42P160 Taxability of Income of New Resident S Corporation Income - Nonresidents (rev 1/10/89);
(226) 42P180 Alimony Deduction - Nonresident;
(227) 42P220 Loss Carry-forward by New Resident (rev 12/1/90);
(228) 42P240 Premature Withdrawal of Individual Retirement Account (IRA) - Penalty Tax (rev 12/1/90);
(229) 42P290 Individual Retirement Account - Part-year Residents and Full - Year Nonresidents (rev 12/1/90);
(230) 42P300 Moving Expense Deduction - Part-year Resident (rev 12/1/90);
(231) 72P105 Definition of Compressed Natural Gas (rev 1/4/96);
(232) 71P010 Date for Computing Usage Tax (rev 12/1/86);
(233) 71P015 Tax Based on Manufacturer's Suggested Retail Price;
(234) 71P016 Taxability of Accessories and Equipment Mounted on a Truck Chassis;
(235) 71P022 Tax for Paid in Another State (rev 3/31/94);
(236) 71P023 Tax-exempt Transfers;
(237) 71P030 Credit for Tax Previously Paid (rev 12/1/94);
(238) 71P040 Two Names on the Same Registration;
(239) 71P060 Stolen Vehicles;
(240) 71P070 Repossessions;
(241) 71P071 Credit for Tax Paid Another State (rev 11/30/92);
(242) 71P080 Trade-ins;
(243) 71P081 Trade-in Credit;
(244) 71P110 Inaccurate Statement of Origin Issued;
(245) 71P120 Military Exemption; and
(246) 71P130 Motorcycle Registration.

ERNIE FLETCHER, Governor
R.B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 31, 2006
FILED WITH LRC: February 1, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 23, 2006 at 1 p.m. in Training Room A, 3rd Floor, 200 Fair Oaks, 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 the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6765.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders;
(1) Provide a brief summary of:
(a) What this administrative regulation does: Previously, the department issued policies and circulars that predated the enactment of KRS Chapter 13A (requiring that such actions be done only by an administrative regulation) and that conflict with current tax laws. This administrative regulation provides that those previously-issued policies and circulars are withdrawn and shall not be utilized or enforced in Kentucky.
(b) The necessity of this administrative regulation: This administrative regulation removes the ambiguity concerning the status of these out-of-date policies and circulars.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130 authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These policies and circulars, although void, have never been officially withdrawn. This administrative regulation will clarify that all of the policies and circulars have been abrogated by KRS Chapter 13A.
(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: 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: In theory, no one is affected. These policies and circulars have been voided since the passage of KRS Chapter 13A. However, this administrative regulation clarifies this fact for all taxpayers.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will provide further clarification for all taxpayers as to the status of these policies and circulars.
(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: 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.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering does not apply to this administrative regulation. This administrative regulation is
wholesale repeal of policies and circulars. As such, there are no separate "tiers" to regulate.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Division of Income Taxation
(New Administrative Regulation)

103 KAR 15:020. Election to pay share of tax on behalf of corporation.

RELATES TO: KRS 141.040(9)
STATUTORY AUTHORITY: KRS 141.050(4), 141.040(9)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) and 141.040(9)(b) require the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. This administrative regulation explains the method for electing to pay the member's, partner's, or shareholder's proportionate share of the tax imposed by KRS 141.040.

Section 1. Definitions. (1) "Pass-through entity" means any corporation identified in KRS 141.010(24)(b) to (h), except a corporation required to be included in a consolidated return under the provisions of KRS 141.220.
(2) "Proportionate share of tax due" means the member's, partner's or shareholder's pro rata share of the total of the pass-through entity's tax due under KRS 141.040 after the application of any credits taken by the corporation but not less than the required minimum tax imposed by KRS 141.040(6).

Section 2. Election to Pay Proportionate Share of Tax Due (1) For taxable years ending on or after December 31, 2005, a member, partner or shareholder may file with the pass-through entity before the due date of the entity's annual return, including extensions, a signed notarized statement of intent to pay the member's, partner's or shareholder's proportionate share of tax due.
(2) The statement shall include the following:
(a) The tax period for which the statement is valid;
(b) An acknowledgement of liability for the proportionate share of tax due for the tax period, including any additional tax due that results from audit adjustments or amended returns filed by the pass-through entity;
(c) An acknowledgement of the jurisdiction of the commonwealth to collect on the member's, partner's or shareholder's proportionate share of tax due from audit adjustments or amended returns filed by the pass-through entity;
(d) The payment method.
(3) The following serves as an example of an election:
"I, ____________, on behalf of myself (or as representative of ____________), agree to pay the proportionate share of tax due for the tax period ending ____________, and any additional tax assessments from audit adjustments or amended returns filed by the pass-through entity. I agree that ____________ (Name of pass-through entity) may deduct from funds available to me as a member, partner, or shareholder if I fail to promptly pay the proportionate share of tax due. I also agree that any refunds resulting from audit adjustments or amended returns filed by the pass-through entity shall be issued by the department to the pass-through entity. I agree that I am subject to jurisdiction of the courts of the Commonwealth of Kentucky for collection of any tax penalty and interest due."
(4) The pass-through entity shall maintain the original statements and make copies available to the department upon request.

Section 3. Filing Requirements. (1) The pass-through entity, on or before the 15th day of the fourth month after the end of its taxable year or by its extended due date, shall:
(a) File with the Department of Revenue as part of the pass-through entity's annual return, a statement identifying the name, address, and Social Security number or federal identification number of each electing member, partner, or shareholder.
(b) Provide each electing member, partner, or shareholder with a statement showing the member's, partner's or shareholder's proportionate share of tax due;

Section 4. Payment of Tax Due. (1) The pass-through entity shall collect and remit the amount of tax due from each electing member, partner or shareholder and remit the tax due with the original tax return.
(2) The election shall be void if the payment of tax is not remitted with the pass-through entity's timely filed annual return. The pass-through entity shall remain liable for the entire tax liability.

Section 5. Audit Adjustments and Amended Returns. (1) The pass-through entity shall collect and remit on behalf of each electing member, partner, or shareholder additional tax including penalties and interest, if applicable, that results from audit adjustments or amended tax returns filed by the entity.
(2) Overpayments resulting from audit adjustments or amended tax returns filed by the entity shall be issued to the pass-through entity. The entity shall distribute the proportionate share of overpayment to each electing member, partner, or shareholder.

R.B. RUDOLPH, Secretary
APPROVED BY AGENCY January 27, 2006
FILED WITH LTC: February 1, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 31, 2006 at 10 a.m. In Training Room A, 3rd Floor, 200 FAIR OAKS, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 558 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation explains the method for electing to pay the member's, partner's, or shareholder's proportionate share of the tax imposed by KRS 141.040.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to provide guidance on changes in pass-through entity and partnership income tax brought about by the 2005 General Assembly.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.050(4) and 141.040(9)(b) require the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides to the member, partner, or shareholder the method and format for electing to pay the proportionate share of tax.
(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: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect members, partners, and shareholders of pass-through entities affected by KRS 141.040 and their corresponding entities.
(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: They are being provided proper procedures and formatting for making the payment election.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the purpose 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: None
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is being applied? Tiering was not used because this administrative regulation already applies only to a subset of taxpayers, who are treated equally under the corresponding statute.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 15:100. Nonrefundable and refundable corporation income tax credits.

RELATES TO: KRS 141.0205, 141.420
STATUTORY AUTHORITY: KRS 131.130(1), 141.018, 141.050(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 168 relative to the imposition of the tax assessed under this chapter on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. This administrative regulation explains the pass-through of income, credit, and the limitation for claiming credit for tax paid under KRS 141.040.

Section 1. Definitions. (1) "PTE corporation" means any corporation identified in KRS 141.010(24)(b) to (h).
(2) "Nonrefundable credit" means the corporation income tax credit permitted by KRS 141.420(3)(a)
(3) "Refundable credit" means the corporation income tax credit permitted by KRS 141.420(3)(c).
(4) "Lower-tier PTE corporation" means a member of a PTE corporation that is itself a PTE corporation.

Section 2. Income. Net income, gain, loss or deduction distributed to partners, members, or shareholders shall be the federal amount adjusted for differences required by KRS 141.010(3), (10) and (11) and shall include income received by the distributing PTE corporation from a lower-tier PTE corporation. Taxes paid under KRS 141.040 shall not reduce net distributive share income.

Section 3. Individual Credit. (1) For an individual partner, member or shareholder, refundable and nonrefundable credits shall be distributed in accordance with distributions of income or loss.
(2) For tax periods beginning after December 31, 2004, and before January 1, 2007, the total amount of refundable and nonrefundable credit distributed from a PTE corporation shall equal the tax due from the corporation prior to the application of any credits taken by the corporation and reduced by the required minimum tax imposed by KRS 141.040(6).
(3) A PTE corporation shall compute the amount of refundable and nonrefundable credit and provide to its partners, members or shareholders the amount of income apportioned to Kentucky and taxed under KRS 141.040, the amount of refundable credit, and the amount of nonrefundable credit for purposes of computing the nonrefundable credit limitation.
(4) A lower-tier PTE corporation shall, in addition to the information in subsection (3), provide to its individual partners, members or shareholders the amount of income apportioned to Kentucky and taxed under KRS 141.040, the amount of refundable credit, and the amount of nonrefundable credit it receives from another PTE corporation for purposes of computing the nonrefundable credit limitation.

Section 4. Nonrefundable Credit Limitation. (1) An individual taxpayer shall compute the limitation in KRS 141.420 (3)(d) for each PTE corporation from which the taxpayer receives income. Distribute share income received indirectly from a lower-tier PTE corporation shall be treated as received from a separate entity for purposes of computing the limitation.
(2) To compute the limitation, an individual shall for each PTE corporation:
(a) Compute tax on the individual's Kentucky taxable income using the tax rates in KRS 141.020.
(b) Calculate tax on the individual's Kentucky taxable income minus the amount of income taxed on the PTE corporation's return using the tax rates in KRS 141.020.
(c) Subtract the tax computed in paragraph (b) of this subsection from tax computed in paragraph (a) of this subsection. This is the tax savings if income attributable to doing business in this state by the PTE corporation is ignored.
(d) Identify the amount of nonrefundable corporation tax credit reported by the PTE corporation.
(e) Select as the nonrefundable credit the lesser of paragraph (c) or (d) of this subsection.
(3) Unused credit shall not carry forward.

Section 5. Estates, Trusts, or General Partnerships. (1) Estates, trusts, or general partnerships shall be treated as individuals for purposes of distributions from a PTE corporation.
(2) Credits accruing to a partner, shareholder, or member that is an estate or a trust shall be:
(a) Used to reduce tax owed by the estate or trust on income received from a PTE corporation subject to the limitation in Section 3(2) of this administrative regulation; or
(b) Distributed to the beneficiaries if the income received from a PTE corporation is distributed.
(3) Estates, trusts, or general partnerships shall provide to their beneficiaries or partners the amount of income apportioned to Kentucky and taxed under KRS 141.040, the amount of refundable credit, and the amount of nonrefundable credit it receives from a PTE corporation for purposes of computing the nonrefundable credit limitation.

Section 6. Corporations. A corporation which is itself a partner or member in a PTE corporation is not entitled to claim the refundable or nonrefundable credit.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LJC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 28, 2006 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 March 21, 2006, 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed regulation to:

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 165B, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-9565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Leslie Saunders

(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 131.130(1), 141.018, and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation explains the nonrefundable and refundable corporation income tax credits enacted by 2005 Ky. Acts ch. 168.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement tax modernization enacted by the 2005 Kentucky General Assembly and comply with KRS 131.130(1), 141.018, and 141.050(4).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation explains how to compute the nonrefundable and refundable corporation income tax credits authorized by KRS 141.420.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: 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: Pass-through entities with limited liability protection that are subject to the corporation income tax imposed by KRS 141.040, Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040, and tax return preparers who prepare tax returns for pass-through entities with limited liability protection that are subject to the corporation income tax imposed by KRS 141.040, and Kentucky Individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040.

Section 1. Definitions. (1) "Applicant" means any person who applies for the biodiesel tax credit as allowed in KRS 141.422 - 141.425.
(2) "Application" means a request for the biodiesel tax credit as allowed in KRS 141.422 - 141.425.
(3) "Bender" means any person who combines biodiesel with petroleum diesel to create a mixture with a minimum of two (2) percent biodiesel.
(4) "Corporation" means any person identified in KRS 141.010(2).
(5) "Department" means the Department of Revenue.
(6) "Distributive share" means the percentage of profits of a general partnership to which a partner is entitled.
(7) "Identification number" means:
(a) Social Security number for individuals.
(b) Federal Employee Identification Number for general partnerships.
(c) Kentucky Corporation Account Number for corporations.
(8) "Person" means any corporation, company, association, partnership, limited liability company, limited liability partnership, other business association, or individual.

Section 2 Application for Tax Credit. (1) Any person requesting a biodiesel credit shall file an application with the Department on forms Schedule BIO or Schedule BIO (K-1) (Form number 41A720BIO).
(2) All applications for the biodiesel credit shall be mailed to the department on or before January 15 for the preceding calendar year.

Section 3. Information Required on the Application Form. (1) The applicant's name and identification number.
(2) A description of how the applicant is taxed for Kentucky income tax purposes.
(3) The applicant's Kentucky Special Fuels License Dealer Account Number.
(4) The number of gallons of biodiesel produced during the calendar year.
(5) The number of gallons of blended biodiesel produced during the calendar year.

Section 4. Use of the Credit. (1) Any applicant who is an individual shall apply any credit due against the tax liability imposed by KRS 141.020.
(2) Any applicant that is a corporation shall apply any credit due against the tax liability imposed by KRS 141.040.

Section 5. Electronic Filings for General Partnerships. (1) Each general partnership claiming the biodiesel tax credit shall file a report with the department by electronic mail at KRC.WEBResponseEconomicDevelopmentCredits@ky.gov.
(2) The electronic filing shall contain:
(a) Each partner's name, address, telephone number, and identification number.
(b) Each partner's distributive share.
(3) Any information required by subsection (2) of this section filed as a separate document attached to the electronic mail message shall be in plain format text or plain ASCII format.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Schedule BIO - Application and Credit Certificate of Income Tax Credit Biodiesel (Form 41A7208BIO)", October 2005; and
(b) "Schedule BIO (K-1) - Distributive Share of Approved Biodiesel and/or Biodiesel Tax Credit - Form number 41A7208BIO (K-1)", October 2005.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Department of Revenue Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 31, 2006
FILED WITH LRC: February 1, 2006 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 24, 2006 at 10 a.m. In Training Room A, 3rd Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 150B Capital Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6765.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation provides the procedure for an applicant to claim a nonrefundable credit to producers of biodiesel or a blend of biodiesel and petroleum diesel to produce a biodiesel blend of which at least 2% is biodiesel. It further describes the information that a general partnership is required to file electronically identifying its partners and the amount of credit to which each is entitled under KRS 141.422 to 141.425.
(b) The necessity of this administrative regulation: KRS 141.425 requires the Department of Revenue to promulgate regulations regarding the application for this tax credit. The Department has prepared a form on which applications must be requested.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130, 141.018 and 141.425 authorize the Department of Revenue to promulgate regulations necessary to enforce this tax credit.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides the procedures for requesting the tax credit. It also provides the filing requirements that a general partnership must follow to identify its partners and the amount of credit to which they would be entitled.
(e) 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 regulation has no effect on existing administrative regulations.
(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.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect any individual subject to Kentucky individual income tax and any entity subject to Kentucky corporation tax that is a producer of biodiesel or blended biodiesel.
(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 foregoing individuals must file a return requesting a credit.
(g) Provide an estimate of how much it will cost to implement this administrative regulation:
(h) Initially: The Department will incur initial costs of printing forms and labor costs of processing forms and reviewing applications.
(i) On a continuing basis: The Department will incur continuing costs of printing forms and labor costs of processing and reviewing applications.
(j) What is the source of the funding to be used for the implementation and enforcement of the administrative regulation: Department of Revenue agency funds.
(k) 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 an increase in costs related to the printing of forms and review and processing of applications.
(l) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(m) TIERING: Is tiering applied? Tiering was used to the extent that various groups of taxpayers (individuals, corporations, general partnerships) must file in different manners to meet the provisions of the statutory authority and to provide the required information.

-1818-
FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 16:020. Qualified exempt organization under KRS 141.040(8)(e).

RELATES TO: KRS 141.040
STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.040
NECESSITY, FUNCTION AND CONFORMITY: KRS 141.040(8) provides special rules for calculating taxable net income, gross receipts or Kentucky gross profits for corporations listed in KRS 141.010(24)(b) to (6) that are owned in whole or in part by a qualified exempt organization. This administrative regulation further explains the term "qualified exempt organization."

Section 1. Qualified exempt organization. As used in KRS 141.010(8), the term "qualified exempt organization" shall exclude any entity created primarily for tax avoidance purposes, with no legitimate business purpose.

Section 2. Tax Avoidance Purposes. In determining if a corporation is created primarily for tax avoidance purposes, the Department of Revenue shall consider:

(1) The corporation has an identifiable place of business with supporting business records;
(2) The corporation maintains books and related accounting records;
(3) The corporation has a staff of employees or engaged contractors adequate in number and with sufficient expertise to conduct its business affairs;
(4) The corporation's finances, policies, and business activities are so controlled and dominated by its parent corporation that the corporation has virtually no separate existence;
(5) The form employed by the corporation for doing business is a sham; and
(6) A reasonable possibility of the corporation of obtaining a profit exists, apart from achieving tax benefits.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 22, 2006 at 10 a.m. in Training Room A, 3rd Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 weekdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: Leslie Saunders

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation further explains the term "qualified exempt organization."
(b) The necessity of this administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization plan.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.040 authorizes the promulgation of administrative regulations to further define "qualified exempt organization."
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation further explains the term "qualified exempt organization" for the purposes of corporate income tax.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. These questions do not apply.
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statute:
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any organization paying corporation income tax.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation provides further guidance to corporation income tax payers regarding qualified exempt organization.
(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: 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 fee or funding increase will be necessary.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers in that group.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 16:090. Apportionment; payroll factor.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(8) requires that all business income of multi-state corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). This regulation provides a detailed explanation of the payroll apportionment factor.

Section 1. Compensation. (1) Compensation does not include payments to an independent contractor or any other person not properly classifiable as an employee. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the corporation in return for personal services, if such amounts constitute income to the recipient under KRS 141.010(12) and (13).
(2) The total amount paid or payable for compensation during
the taxable year shall be determined by the corporation's accounting method. If the corporation has adopted the accrual method of accounting, compensation properly accrued shall be deemed to have been paid. Notwithstanding the corporation's method of accounting, compensation paid to employees may be included in the payroll factor by the cash method if the corporation is required to report compensation under such method for unemployment compensation purposes. The corporation's treatment of compensation paid in filing returns or reports to all states. If the corporation is not consistent in its reporting, it shall disclose in its Kentucky return the nature and extent of the inconsistency.

(3) Compensation paid to employees whose services are performed entirely in a state where the corporation is exempt from taxation, for example, by Pub.L. 80-272, codified as 15 U.S.C. §§ 381 to 384, shall be included in the denominator of the payroll factor.

(4) An individual shall be considered an employee if the individual is included by the corporation as an employee for purposes of the payroll taxes imposed by 26 U.S.C. 3121(d). Independent contractors shall not be considered employees.

Section 2. Payroll Factor-Numerator. (1) If compensation paid to employees is included in the payroll factor by the cash method of accounting, or if the corporation is required to report compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the corporation to Kentucky for unemployment compensation purposes consists of compensation paid in Kentucky, except for compensation included in the numerator of this regulation. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to Kentucky for unemployment compensation purposes.

(2) In determining if a service performed without Kentucky is incidental to the employee's service in Kentucky, a service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction shall be considered an incidental service.

(3) In determining where the employee's base of operations is located, the place of more or less permanent nature from which the employee starts work and to which the employee customarily returns in order to receive instructions from the corporation or communications from customers or other persons, or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of the employee's trade or profession at some other point or points, shall be considered to be the base of operations.

(4) The place from which the power to direct or control is exercised by the corporation shall be the place from which the service is directed or controlled.

Section 3. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 9, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 27, 2006 at 10 a.m. in Training Room A, 3rd Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: The administrative regulation explains the payroll factor used in calculating the business income of multi-state corporations.
(b) The necessity of this administrative regulation: This regulation is necessary to comply with changes in the corporation income tax laws brought about by HB 272 enacted in the 2005 General Assembly.
(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 setting out the payroll factor calculation necessary to comply with the Kentucky corporation income tax law.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Multistate taxpayers with payroll in Kentucky will now have guidance for calculating the payroll factor of business income.
(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: Not applicable.
(b) The necessity of the amendment to this administrative regulation: Not applicable.
(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.
(d) How the amendment will assist in the effective administration of the statutes: Not applicable.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky taxpayers of corporate income tax that apportion income will be affected.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: They will have guidance necessary to comply with changes in the law.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be minimal costs to distribute any notification of the regulatory guidelines to the various industries and to amend forms.
(b) On a continuing basis: There will be no added continual costs to the existing administrative responsibilities of the Department of Revenue in assisting taxpayers with their corporate income tax responsibilities.
(6) What is the source and funding to be used for the implementation and enforcement of this administrative regulation: The Department of Revenue will use normal operating funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: No increase in fees or funding is 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 directly or indirectly establish new fees.
(9) TIERING: Is tiering applied? Tiering is unnecessary with this administrative regulation, because all taxpayers who apportion income are affected equally to the extent the tax changes apply to them.
103 KAR 18:210. Calculation of gross income for corporations that are pass-through entities and treatment of certain deductions for their individual members, partners and shareholders.

RELEVANT TO: KRS 141.010, 141.020, 141.040, KRS 141.050, 141.207, 141.208, 141.420

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky corporation income tax law requires pass-through entities (S-corporations, limited partnerships and limited liability companies) that are doing business in this state, to compute gross income for purposes of paying Kentucky corporation income tax. This administrative regulation establishes for pass-through entities how gross income is to be calculated. This administrative regulation also clarifies the treatment of certain deductions by individual partners, members and shareholders in limited liability pass-through entities in the computation of taxable net income.

Section 1. Gross income of those pass through entities taxable as corporations as defined in KRS 141.010(2)(a)(b) is to be computed in a manner identical to that required for federal income tax purposes except as otherwise provided in this administrative regulation.

Section 2. Treatment of certain deductions for individual members, partners and shareholders of corporations defined in Section 1.

(1) Individuals shall deduct their distributive share of a corporation's depreciation and capital losses allowed under Sections 168 and 179 of the Internal Revenue Code to compute Kentucky adjusted gross income.

(2) Individuals may deduct, subject to the limitations of the Internal Revenue Code, their distributive share of charitable contributions made by the corporation.

Section 3. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 21, 2006 at 10 a.m. In Training Room A, 3rd Floor, 200 Fair Oaks, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1958 Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

1. Provide a brief summary of:
   a. What this administrative regulation does: This administrative regulation establishes for pass through entities how gross income is to be calculated. This administrative regulation also clarifies the treatment of certain deductions by individual partners, members and shareholders in limited liability pass-through entities in the computation of taxable net income.

   2. The necessity of this administrative regulation: The administrative regulation is necessary to provide guidance on changes in pass-through entity and partnership income tax brought about by the 2005 GA.

   3. How this administrative regulation conforms to the content of the authorizing statutes: KRS 141.050(4) and 141.040(9)(b) require the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141.

   4. How this administrative regulation currently assets or will assist in the effective administration of the statutes: This administrative regulation establishes for pass-through entities how gross income is to be calculated. This administrative regulation also clarifies the treatment of certain deductions by individual partners, members and shareholders in limited liability pass-through entities in the computation of taxable net income.

   5. 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: 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

   6. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect members, partners, and shareholders of pass-through entities affected by KRS 141.040 and their corresponding entities.

   7. 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: They are being provided with instructions as to how to make necessary calculations.

   8. Provide an estimate of how much it will cost to implement this administrative regulation:
      a. Initially: None
      b. On a continuing basis: None

   9. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

   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.

   11. State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.

   12. TIERING: Is tiering applied? Tiering was not used because this administrative regulation already applies only to a subset of taxpayers, who are treated equally under the corresponding statute.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(103 KAR 18:220. Alternative minimum calculation.

RELATES TO: KRS 141.040
STATUTORY AUTHORITY: KRS 131.130, 141.018
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of
KRS Chapter 141. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 168 relative to the imposition of the tax assessed under this chapter on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. This administrative regulation establishes criteria for computing gross receipts and gross profits for purposes of computing the alternative minimum calculation of the corporation income tax imposed by KRS 141.040.

Section 1. Alternative Minimum Calculation of Corporation's Kentucky Gross Receipts. In the case of corporations required to apportion taxable net income, the amount of Kentucky gross receipts shall equal the amount reported as the total Kentucky sales in the numerator of the sales factor pursuant to KRS 141.120(9)(c) and 103 KAR 16:270. In the case of corporations that are not required to apportion taxable net income, the amount of gross receipts shall equal the total sales of the corporation in Kentucky as determined in accordance with KRS 141.120(9)(c) and 103 KAR 16:270. The alternative minimum calculation shall be computed as follows:

1. Add Kentucky gross receipts from sales of tangible personal property in this state reduced by returns and allowances attributable to Kentucky gross receipts. Returns and allowances attributable to Kentucky gross receipts shall be determined by separate accounting.
2. Add gross receipts from sales other than sales of tangible personal property in this state;
3. Eliminate intercompany sales of the members of the affiliated group in the case of a consolidated return filed under the provisions of KRS 141.200 in computing the consolidated alternative minimum calculation; and
4. Multiply the total of subsections (1) and (2) of this section by $0.00095.

Section 2. Alternative Minimum Calculation of Corporation's Kentucky Gross Profits. The alternative minimum calculation shall be computed as follows:

1. Add Kentucky gross receipts:
   a. Reduced by returns and allowances attributable to Kentucky gross receipts. Returns and allowances attributable to Kentucky gross receipts shall be determined by separate accounting. For purposes of the gross profits calculation, a corporation that is not taxable in another state under KRS 141.010(14)(b) shall only include gross receipts attributable to Kentucky; and
   b. Reduced by the cost of goods sold attributable to Kentucky gross receipts. Returns and allowances attributable to Kentucky gross receipts shall be determined by separate accounting. In determining the method specified by the Internal Revenue Service, the Internal Revenue Code, regulations explaining the Internal Revenue Code, private letter rulings, or other guidance issued by the Internal Revenue Service concerning the amount of goods sold allowable for federal income tax purposes shall apply; and
2. Multiply the total of subsections (1) and (2) of this section by $0.0075.

Section 3. Comparison of Alternative Minimum Calculation Amounts. The corporation's tax liability is the greater of:

1. The tax computation based on net income;
2. The lesser of the alternative minimum calculation based on:
   a. Gross receipts; or
   b. Gross profits; or
3. $175

Section 4. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 6, 2008
FILED WITH LRC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 21, 2006 at 1 p.m. in Training Room A, 3rd Floor, 200 Fair Oaks, 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 the required 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 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 March 31, 2006. Send written notice of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 120B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation further explains the calculation of alternative minimum for Kentucky corporation income tax.
(b) The necessity of this administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization plan. It explains the how to calculate a corporation's alternative minimum income tax.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.030(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer all tax statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Because of changes to Kentucky corporation income tax calculations, this regulation is necessary to provide guidance for the alternative minimum calculations.

(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. These questions do not apply.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment will assist in the effective administration of the statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation provides further guidance to corporation income tax payers regarding how to make necessary alternative minimum calculations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any corporation paying corporation income tax.

(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 fee or funding increase will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation, because the corporation must determine
whether the income tax, the alternative minimum calculation, or $175 is the greater figure.

FINANCE AND ADMINISTRATION CABINET
Office of Revenue
Office of Income Taxation


RELATES TO: KRS 131.130, 141.205
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. Kentucky corporation income tax law disallows intangible expenses, Intangible interest expenses and management fees when such expenses and fees are directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related member of an affiliated group or with a foreign corporation, unless certain criteria are met. This regulation explains and provides further guidance as to when these expenses and fees are allowed or disallowed.

Section 1. Definitions. (1) "Actual comparables", means transactions between the recipient and unrelated parties involving the same intangible property to the subject transaction.

(2) "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information.

(3) "Measured, in whole or in part, by net income" means that the receipt of the payment by the recipient is reported and included in income for purposes of a tax on net income or in the franchise for purposes of the franchise tax, and not offset or eliminated in a combined or consolidated return which includes the corporation.

(4) "Reported and included in income for purposes of a tax on net income or franchise," means:
   (a) For a tax on net income, reported and included in the net income apportioned or allocated to the taxing jurisdiction;
   (b) For a franchise tax, reported and included in the franchise apportioned or allocated to the taxing jurisdiction.

(5) "Subject transaction" means the transaction giving rise to the Intangible expense, Intangible interest expense or management fee.

Section 2. Disclosure; General. As part of the required disclosure, the corporation shall provide a description of the nature of the payment made to the recipient. This description shall contain:

(1) For intangible expenses or intangible Interest expenses:
   (a) A narrative regarding the subject transaction;
   (b) The extent of the rights being transferred (for example, if a patent is being licensed, whether that license is exclusive or non-exclusive, and whether the transferee has any rights to sublicense);
   (c) How the amount of the payment is calculated; and
   (d) If there is a document that sets forth the terms of the subject transaction, a copy of that document.

(2) For management fees:
   (a) A narrative of the services being performed for the corporation by the recipient;
   (b) How the amount of the payment is calculated; and
   (c) If there is a document that sets forth the terms of the transaction, a copy of that document.

Section 3. Disclosure; Arm's Length Transaction. A corporation may be required to establish that the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction.

(1) If there are actual comparables, the actual comparables shall be used.

(2) If there are no actual comparables, the two (2) primary factors to take into account when determining whether the subject transaction was made at a commercially reasonable rate and at terms comparable to an arm's length transaction are:
   (a) The degree of comparability between the subject transaction and the proposed comparable transactions; and
   (b) The quality of the data and assumptions used in the analysis.

Section 4. Disclosure; Intangible Expense and Intangible Interest Expense. With respect to intangible expense and intangible interest expense, the corporation shall make additional disclosures if it cannot utilize any of the other methods to establish that it is entitled to the deduction. One (1) of those disclosures is that the corporation shall show that the payment made to the recipient and included in income for purposes of a tax on net income or franchise was subject to, its state of commercial domicile, a net income tax, or a franchise tax, measured in whole or in part, by net income. If the recipient is a foreign corporation, the foreign nation shall have in force a comprehensive income tax treaty with the United States.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 29, 2006 at 10 a.m. at the Department of Revenue, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Interested individuals interested in hearing this hearing shall notify this agency in writing at least 30 days prior to the hearing of their intention 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 through March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed regulation to:

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-2420, fax (502) 564-9563.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

(1) Provide a brief summary of:
   (a) What this administrative regulation does: Kentucky corporation income tax law disallows intangible expenses, Intangible interest expenses and management fees when such expenses and fees are directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related member of an affiliated group or with a foreign corporation, unless certain criteria are met. This regulation explains and provides further guidance as to when these expenses and fees are allowed or disallowed.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to implement tax modernization enacted by the 2005 Kentucky General Assembly and comply with KRS 131.150(1), 141.018 and 141.050(4).
   (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS
141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation explains and provides further guidance as to when these expenses and fees are allowed or disallowed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: 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: Any corporations making direct or indirect transactions with one or more related members of an affiliated group or with a foreign corporation, unless certain criteria are met. The Department of Revenue will be affected to the extent that it administers the nonrefundable and refundable corporation income tax credits authorized by KRS 141.420.

(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 explains and provides further guidance as to when these expenses and fees are allowed or disallowed.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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: 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, because the requirements of this regulation relating to Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 apply to every applicable taxpayer.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)


RELATES TO: KRS 141.010, 141.040, 141.206.

STATUTORY AUTHORITY: KRS 131.130, 141.018, 141.050(4)

NECESSITY AND FUNCTION: KRS 141.040(1) requires nonexempt corporations doing business in Kentucky to pay corporation income tax and file the required tax forms for that tax. KRS 141.206 requires general partnerships doing business in Kentucky to file tax forms to compute the distribution of income to the general partners. KRS 131.130(1) asks the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky's tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations necessary to implement 2005 Ky. Acts ch. 168. KRS 141.010(25) defines "doing business in this state". This administrative regulation establishes what constitutes nexus in Kentucky under a doing business standard and provides examples.

Section 1. Definitions. (1) "Business situs" means in relation to intangible personal property:
(a) The corporation's or general partnership's commercial domicile;
(b) The place where the intangible personal property is utilized by the corporation or general partnership; or
(c) The state where the intangible personal property is located if possession and control of the intangible personal property is localized in connection with a trade or business so that substantial use or value attaches to the property.

(2) "Commercial domicile" means the principal place from which the trade or business of the corporation or general partnership is managed.

(3) "Corporation" is defined by KRS 141.010(24).

(4) "Doing business in this state" is defined by KRS 141.010(25).

(5) "Foreign corporation" means a corporation incorporated or formed under the authority of another state or country.

(6) "Foreign general partnership" means a general partnership organized under the laws of another state or country.

(7) "General partnership" is defined by KRS 141.206(1)(a).

(8) "Owning or leasing property in this state" means owning or leasing real or tangible personal property in Kentucky. Examples of this include:
(a) Maintaining an office or other place of business in Kentucky.
(b) Maintaining in Kentucky an inventory of merchandise or material for sale, distribution or manufacture, or consigned goods, regardless of whether kept on the taxpayer's premises, in a public or retail warehouse, or otherwise.
(c) Owning computer software used in the business of a third party within Kentucky.

(9) "Qualified real estate investment trust subsidiary" is defined by Section 856(h)(2) of the Internal Revenue Code, 26 U.S.C. 856(h)(2).

(10) "Qualified subchapter S subsidiary" is defined by Section 1361(b)(3)(B) of the Internal Revenue Code, 26 U.S.C. 1361(b)(3)(B).

(11) "Related corporation" means a corporation in which another corporation or general partnership maintains an ownership interest of fifty (50) percent or more during any portion of the taxable year.

(12) "Single member limited liability company" means a limited liability company with one (1) member.

Section 2. In General; Rules of Construction. (1) For purposes of the corporation income tax imposed by KRS 141.040(1) and the filing requirement imposed on general partnerships by KRS 141.206(2), the term "doing business in this state" or "doing business" shall be used in a comprehensive sense concerning the operation of any profit-seeking enterprise or activity in Kentucky.

(2) In determining if a corporation or general partnership is doing business in Kentucky, it shall be immaterial whether the activities actually result in a profit or loss.

(3) Whether a corporation or general partnership is doing business in Kentucky shall be determined by the facts in each case.

(4) Whether the activities of a foreign corporation or general partnership fall within the scope of "solicitation" within the meaning of Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384 shall be a factual determination. The examples in Sections 1, 3 and 4 of this administrative regulation shall be used as guidelines. In applying the guidelines to the particular circumstances and activities of a foreign corporation or general partnership, the Department of Revenue shall employ the following rules of construction:
(a) The effect of the activities listed in Sections 1, 3, and 4 of this administrative regulation shall be cumulative. In determining whether a taxpayer is doing business in Kentucky, all of these activities shall be considered as a whole.
(b) If the Department of Revenue determines that a taxpayer is doing business in Kentucky, the taxpayer shall carry the burden of substantiating any claim that these activities in Kentucky do not constitute doing business under either Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384, or the United States Constitution.

(c) Documentary evidence shall be given substantial weight in establishing the nature and extent of the taxpayer's activities. Affidavits or other evidence not contemporaneous with the events in question shall be given little weight.

(d) The term "solicitation" shall include only actual requests for purchases and activities that are entirely ancillary to requests for purchases. An activity shall be considered entirely ancillary to the requesting of purchases if it serves no independent business purpose apart from its connection to the solicitation of orders.

(a) Activities conducted by a foreign corporation or general partnership with respect to a particular order shall not constitute "solicitation" if the activity occurs after the order has been placed.

Section 3. Exception for Solicitation Activities Protected by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384. (1) General; presumption of state law. This regulation adopts a narrow interpretation of the immunity afforded by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384, which precludes the imposition of Kentucky income tax upon a foreign corporation, or the filing requirement imposed on foreign general partnerships, if the corporation's or general partnership's sole activity in Kentucky is the corporation's or general partnership's representatives soliciting orders for the sale of tangible personal property in the name of the corporation or general partnership or in the name of a prospective customer if the orders are:

(a) Sent outside of Kentucky for approval or rejection; and

(b) Filled by shipment or delivery from a point outside of Kentucky.


(a) If a corporation or general partnership engages both in protected solicitation activities and in any other activity that is not a protected solicitation activity, it may not claim the immunity granted by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384.

(b) Solicitation of orders shall not be protected by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384, if the solicitation is for the:

1. Sale or provision of services;
2. Sale, lease, rental, license or other disposition of real property or intangibles.

(3) Activities normally considered to be solicitation. The activities listed in this subsection shall serve as examples of activities that ordinarily fall within the scope of "solicitation" under Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384:

(a) Solicit sales through advertisements;
(b) Carrying samples and promotional materials only for display or distribution without charge or other consideration;
(c) Soliciting orders by an in-state resident employee or representative of the company, if that person does not maintain or use any office or other place of business in the state other than an "in-home" office as described in subsection (4) of this section;
(d) Furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;
(e) Checking customer inventories for reorder without a charge therefore, but not for other purposes such as quality control;
(f) Recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;
(g) Conducting solicitation activities from an employee's in-home work space, if the use of the space is not paid for by the company;
(h) Performing missionary sales activities, including the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if the solicitation activities are otherwise immune;
(i) Coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;
(j) Maintaining a sample or display area for an aggregate of fourteen (14) calendar days or less at any one (1) location within Kentucky during the tax year, if no other activities inconsistent with solicitation take place;
(k) Mediating direct customer complaints if the purposes are solely to ingratiate sales personnel with the customer and facilitate requests for orders;
(l) Passing orders, inquiries and complaints on to the home office;
(m) Providing automobiles to sales personnel for use solely in solicitation activities; and
(n) Owning, leasing, using or maintaining personal property for use in the employee or representative's "in-home" office or automobile that is solely limited to the conducting of solicitation activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to solicitation or permitted by this Section shall not, by itself, remove the protection.

(4) Activities that are not solicitation. The activities listed in this subsection shall serve as examples of activities in this state that fail outside the scope of "solicitation" and are not protected by Pub.L. 86-272, codified as 15 U.S.C. §§ 381 to 384 unless de minimis within the meaning of Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992):

(a) Making repairs or providing maintenance or service to the property sold or to be sold;
(b) Installing or supervising installation at or after shipment or delivery;
(c) Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;
(d) Investigating credit;
(e) Repossessing property;
(f) Conducting training courses, seminars or lectures for personnel other than personnel involved only in solicitation;
(g) Investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints if the sole purpose of the mediation is to ingratiate the sales personnel with the customer;
(h) Approving or accepting orders;
(i) Securing deposits on sales;
(j) Picking up or replacing damaged or returned property, including state or unsaleable property;
(k) Maintaining a sample or display area for an aggregate of fifteen (15) days or more at any one location within Kentucky during the tax year;
(l) Providing technical assistance or service, including engineering assistance or design service, if one (1) of the purposes of it is other than the facilitation of the solicitation of orders;
(m) Hiring, training or supervising personnel for other than solicitation activities;
(n) Using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;
(o) Carrying samples for sale, exchange or distribution in any manner for consideration or other value;
(p) Providing shipping information and coordinating deliveries;
(q) Supervising the operations of a franchise or similar party;
(r) Monitoring, inspecting, or approving work performed by an independent contractor under a warranty or similar contractual arrangement;
(s) Consigning stock of goods or other tangible personal property for sale to any person, including an independent contractor;
(t) Filling sales orders by shipment or delivery from a point within Kentucky;
(u) Owning, leasing, maintaining or otherwise using as part of the business operations in Kentucky any of the following facilities or property:
1. Repair shop;
2. Parts department;
3. Warehouse;
4. Meeting place for directors, officers, or employees;
5. Stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation; or
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6. Telephone answering service that is publicly attributed to the company or to an employee or agent of the company in their representative status;

(v) Maintaining, by any employee or other representative, an office or place of business of any kind other than an in-home office. For the purpose of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office. An office shall be considered in-home if it is located within the residence of the employee or representative, and:

1. Is not publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity. Factors considered in determining if an office is publicly attributed to the company or to the employee or representative of the company in an employee or representative capacity shall include:

(a) A telephone listing or other public listing within the state for the company, or for an employee or representative of the company in that capacity, or other indications through advertising or business literature that the company or its employee or representative can be contacted at a specific address within the state;

(b) A nonpublic distribution and use of business cards and stationery identifying the employee’s or representative’s name, address, telephone and fax numbers, and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative; or

(c) The maintenance of any office or other place of business in the state that does not strictly qualify as an “in-home” office as described in this paragraph shall, by itself, cause the loss of protection under this subsection;

2. The use of the office is limited to: soliciting and receiving orders from customers; for transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Pub.L. 86-272, codified as 15 U.S.C.A. 381 to 388.

(b) Being a related corporation doing business in Kentucky which is performing activities as the corporation’s or general partnership’s agent in Kentucky;

(c) Receiving income from a contract between a corporation or general partnership and a related corporation doing business in Kentucky if the income is derived from the related corporation’s activities in Kentucky;

3. Being a corporation that is essentially a shell corporation, or other facts indicate that an independent corporate existence is essentially disregarded;

4. Entering into franchising or licensing agreements and receiving income from franchising or licensing agreements that have acquired a Kentucky business status.

(b) Accepting orders in Kentucky;

(c) Operating a professional sports team which engages in professional sports activities in Kentucky;

(d) Owning an interest in mineral rights in Kentucky, including interests in coal, oil, or natural gas;

(e) Leasing motion picture films to movie theaters and television stations in Kentucky;

(f) Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

(g) Being a partner in a general partnership doing business in Kentucky; or

(h) Receiving income from intangible personal property if the intangible personal property has acquired a Kentucky business status.

2. The activities listed in this subsection shall serve as examples of “doing business” under KRS 141.010(25)(g):

(a) Performing or soliciting orders for services in Kentucky, including those services performed in Kentucky by a third party on behalf of a corporation or general partnership;

(b) Selling or soliciting orders for real property;

(c) Selling or soliciting orders for intangible personal property;

(d) Selling tangible personal property; or

(e) Delivering merchandise inventory on consignment to its Kentucky distributors or dealers.

3. A corporation or general partnership may be considered doing business under KRS 141.010(25)(d) without having employees in Kentucky. If activities are performed in Kentucky by a third party on behalf of the corporation or general partnership, the corporation or general partnership shall be considered doing business in Kentucky.

4. General. The activities in this paragraph shall not, in themselves, subject a corporation to Kentucky corporation income tax or a general partnership to a Kentucky filing requirement. These exempted activities shall not relieve a corporation from Kentucky corporation income tax if the corporation is otherwise subject to Kentucky corporation income tax and shall not relieve a general partnership from a Kentucky income tax filing requirement if the general partnership is otherwise required to file a Kentucky return.

3. More ownership of a corporation that is doing business in Kentucky shall not subject the owner to the requirements. However, based on additional facts and circumstances, sufficient contacts with Kentucky may exist to establish that the corporation or general partnership is doing business in Kentucky. The activities listed in this subparagraph shall serve as examples of facts and circumstances that establish that the corporation or general partnership is doing business in Kentucky:

(a) Being the parent corporation of a qualified real estate investment trust subsidiary that is doing business in Kentucky;

(b) Being the parent corporation of a qualified subchapter S subsidiary that is doing business in Kentucky;

(c) Being the member of a single member limited liability company that is doing business in Kentucky and is disregarded for federal income tax purposes;

(d) Being a related corporation doing business in Kentucky which is performing activities as the corporation’s or general partnership’s agent in Kentucky;

(e) Receiving income from a contract between a corporation or general partnership and a related corporation doing business in Kentucky if the income is derived from the related corporation’s activities in Kentucky;

(f) Being a corporation that is essentially a shell corporation, or other facts indicate that an independent corporate existence is essentially disregarded;

(g) Entering into franchising or licensing agreements and receiving income from franchising or licensing agreements that have acquired a Kentucky business status.

(h) Employee or independent agent activity. A foreign corporation or general partnership that is not otherwise doing business in Kentucky may be considered to not be doing business in Kentucky, even if its employees or independent agents are performing certain de minimis activities in Kentucky. The following items shall serve as examples of de minimis activities:

1. A foreign corporation or general partnership sending various employees, e.g., legal staff and witnesses, to assist its independent legal counsel on defending a lawsuit in Kentucky. The law firm providing counsel shall be taxable in Kentucky;

2. A foreign corporation or general partnership sending its employees to Kentucky to purchase raw materials and inventory;

3. A foreign corporation or general partnership giving its highest performing sales person an expense paid vacation to Lake Barkley, Kentucky; or

4. A foreign corporation or general partnership sending its business records to Kentucky for its use by its independent auditors.

Section 5. This administrative regulation shall apply to taxable years beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: January 27, 2006
FILED WITH RFC: February 1, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall
be held on March 24, 2006 at 1 p.m. In Training Room A, 3rd Floor, 200 Fair Oaks, 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 the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 131.130(1), 141.018, and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation explains the new standard for corporations and general partnerships.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 131.130(1), 141.018, and 141.050(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue promulgate administrative regulations to relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation explains what business activities in Kentucky establish the Commonwealth's income tax jurisdiction over foreign corporations or foreign general partnerships.

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

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

(b) The necessity of the amendment to this administrative regulation: 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: Foreign corporations that are subject to the corporation income tax imposed by KRS 141.040, foreign general partnerships subject to the filing requirement imposed on general partnerships by KRS 141.206, owners of foreign corporations that are pass-through entities subject to the corporation income tax imposed by KRS 141.040, partners in foreign general partnerships that are subject to the filing requirement imposed on general partnerships by KRS 141.206, tax return preparers, tax accountants, and tax lawyers. The Department of Revenue will be affected to the extent that it administers the corporation income tax and the filing requirement imposed on general partnerships by KRS 141.206.

(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: Foreign corporations and foreign general partnerships that are either subject to the corporation income tax imposed by KRS 141.040, or the filing requirement imposed on general partnerships by KRS 141.206 will be required to file a Kentucky corporation income tax return or a Kentucky general partnership tax return.

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

(a) Initially: 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: Department of Revenue 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 because the requirements of this regulation apply to foreign corporations and foreign general partnerships that are doing business in Kentucky.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)


RELATES TO KRS 141.011, 141.200
STATUTORY AUTHORITY: KRS 131.130, 141.018
NECESSITY, FUNCTION AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky. Acts ch. 168 relative to the imposition of the tax assessed under this chapter on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. This administrative regulation establishes methods of computing a corporation's net operating loss deduction and application of the deduction to prior and subsequent taxable years on taxable net income as authorized by KRS 141.011 and 141.200(11)(b).

Section 1. Definitions. (1) "Allowable net operating loss carryforward from a previous period" in the case of a nexus consolidated filer means a net operating loss carryforward computed under the guidelines provided in Section 2(3) or (4) of this administrative regulation.

(2) "Corporation" for elective consolidated returns means a corporation as defined in KRS 141.200(2)(d). "Corporation" for separate or nexus consolidated returns for periods beginning on or after January 1, 2005 means a corporation as defined in KRS 141.010(24).

(3) "Corporation income tax nexus" means being subject to the corporation income tax imposed by KRS 141.040(1).

(4) "Current year loss limitation" means the limitation provided by KRS 141.200(11)(b).

(5) "Current year loss limitation adjustment" means the amount of net operating losses of the includable corporations in a nexus consolidated return, including any allowable net operating loss carryforward from a previous period that exceeds the current year loss limitation.

(6) "Elective consolidated filer" means a corporation as defined in Section 7701(a)(3) of the Internal Revenue Code, filing in accor-
dance with KRS 141.200(3) and (4).

7. "Elective consolidated return" means a return defined under KRS 141.200(2)(c).

8. "Includable corporation" for the nexus consolidated filer means includible corporation as defined in KRS 141.200(9)(d).

9. "Net operating loss" means net operating loss defined under the Internal Revenue Code as adjusted for differences between KRS Chapter 141 and the Internal Revenue Code.

10. "Nexus consolidated filer" means a corporation as defined under KRS 141.010(24), filing in accordance with KRS 141.200(8), (9), (10) and (11).

11. "Nexus consolidated return" means a return defined under KRS 141.200(9)(f).

12. "Separate return" means a return defined under KRS 141.200(2)(c) or 141.200(9)(g).

13. "Separate return filer" means a corporation filing in accordance with KRS 141.200(3) or 141.200(10).

Section 2. Computation and Application of Net Operating Loss

1. "Separate return filers" and "elective consolidated filers" shall compute net operating loss for Kentucky purposes in the following manner:

(a) Apply the apportionment factor provided by KRS 141.120 to the net operating loss.

(b) The apportioned net operating loss is available for carryforward.

2. Nexus consolidated filers" shall compute net operating loss for Kentucky purposes in the following manner:

(a) Net operating loss computations shall be made before application of the apportionment factor provided by KRS 141.120.

(b) The current year loss limitation adjustment shall be:

1. Added to net income if the total of the net operating losses for the includable corporations that have incurred a net operating loss for the current taxable year and any allowable net operating loss carryforward from a previous period exceeds the current year loss limitation; or

2. Subtracted from net income if the current year loss limitation is greater than the total of the current year losses of includable corporations and any allowable net operating loss carryforward from a previous period.

(c) Any current year loss limitation adjustment that exceeds the current year loss limitation is available as a Kentucky net operating loss carryforward, and is available to be applied against the current year loss limitation for future taxable periods pursuant to KRS 141.200(11)(b).

3. Separate return loss year rules for a nexus consolidated return. These rules are intended to address the situation where a corporation that previously filed a separate return, and incurred net operating losses as a separate entity, will now be filing as part of a consolidated nexus return, and how those separate net operating losses are to be treated as part of the consolidated nexus return.

(a) Separate entity filers having a net operating loss carryforward for the most recent period that began prior to January 1, 2005, may carry that loss forward to the first return filed under the nexus consolidated rules pursuant to KRS 141.200(11), if:

1. The separate return filer had nexus for Kentucky corporation income tax purposes for the separate return periods that generated the loss; and

2. A supplemental statement, as described in paragraph (c) of this subsection, is attached to the return.

(b) The net operating loss carryforward shall be adjusted to a proration amount unless an election has been made to utilize the net operating loss carryforward as an apportioned amount.

(c) A supplemental statement shall be attached to the Kentucky consolidated return that reflects a breakdown of the separate return loss carryforward amounts by entity.

4. Elective consolidated net loss carryforward to a nexus consolidated return period. These rules are intended to address the situation where an elective consolidated filer who incurred net operating losses as a consolidated group, will now be filing as part of one or more consolidated nexus returns, and how those elective consolidated net operating losses are to be treated for purposes of the consolidated nexus return.

(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to the first return filed under the nexus consolidated rules pursuant to KRS 141.200(11).

(b) Any net operating loss carryforward from the last return of an elective consolidated group shall be computed under the provisions of Section 1502 of the Internal Revenue Code and related regulations and be adjusted for the differences between KRS Chapter 141 and the Internal Revenue Code.

(c) The net operating loss carryforward amount shall be on a proration basis unless an election is made to carry forward a post apportionment loss to be utilized in computing the current year loss limitation.

(d) If any of the corporations that filed as part of the elective consolidated return did not have nexus with Kentucky for the consolidated return period that generated the net operating loss, then that corporation's share of the net operating loss cannot be carried forward to a nexus consolidated return.

(e) For those situations where the election period as defined in KRS 141.200(3)(d) has expired and the elective consolidated return group is survived by one or more nexus consolidated groups:

1. Compute on a separate entity basis, the proration loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return reflecting this computation.

2. The net operating loss carryforward amount shall be on a proration basis unless an election is made to carry forward a post apportionment loss to be utilized in computing the current year loss limitation.

3. Determine each net operating loss corporation's share of the net operating loss carryforward in the following manner:

a. Add all separate entity losses together.

b. Divide each separate entity loss amount by the total of the separate entity losses.

c. Multiply the resultant percentage by the consolidated net operating loss carryforward.

4. Carry the loss carryforward amount in subparagraph 3c of this subparagraph to the nexus consolidated return in which the corporation is an includable corporation under the provisions of KRS 141.200(9) through (14).

5. Elective consolidated net operating loss carryforward to a separate return filer. These rules are intended to address the situation where an elective consolidated filer who has incurred net operating losses as a consolidated group, will now be filing separate entity returns, and how those elective consolidated net operating losses are to be treated for purposes of the separate entity returns.

(a) An elective consolidated filer having a net operating loss carryforward for the last elective consolidated return may carry that loss forward to separate returns filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g). The following rules shall apply to this situation.

1. Compute on a separate entity basis, the post-apportionment Kentucky loss for each corporation that was included as part of the consolidated net operating loss computation on the last return filed by the elective consolidated group. The separate entity loss shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the consolidated return and the separate corporation returns reflecting this computation.

2. Determine each net operating loss corporation's share of the net operating loss carryforward in the following manner:

a. Add all separate entity losses together.

b. Divide each separate entity loss amount by the total of the separate entity losses.

c. Multiply the resultant percentage by the consolidated net operating loss carryforward.

d. Carry the separate entity loss computed in Section 2(5)(a)(2)(1)-(3) to the first separate return due after the expiration of the elective consolidated return.

6. Nexus consolidated net operating loss carryforward to a
The rules are intended to address the situation where a nexus consolidated filer ceases to exist who had incurred net operating losses as a consolidated group, will now be filing separate entity returns, and how those nexus consolidated net operating losses are to be treated for purposes of the separate entity returns.

(a) If a nexus consolidated filer ceases to exist and a consolidated net operating loss carryforward exists, that net operating loss carryforward may be carried forward to the separate returns filed pursuant to KRS 141.200(2)(c) or 141.200(9)(g). The following rules apply to this situation:

1. Compute on a separate entity basis, the post-apportionment Kentucky loss for each loss corporation that was included as part of the consolidated net operating loss computed on the last return filed by the nexus consolidated group. The separate entity net operating loss carryforward shall reflect adjustments for the differences between KRS Chapter 141 and the Internal Revenue Code. A columnar schedule shall be included with the separate corporation return(s) reflecting this computation.

2. Add all the separate entity computed losses together.

3. Divide each separate loss amount by the total consolidated loss amount.

4. Multiply the resultant percentage by the consolidated net operating loss carryforward.

5. Carry the separate entity net operating loss carryforward computed in subparagraphs 2-4 of this paragraph to the first separate return due after the nexus consolidated group ceases to exist.

Section 3. The administrative regulation shall apply to the computation of the net operating loss deduction of corporations for taxable years beginning on or after January 1, 2006 except where otherwise noted in this administrative regulation.

R.B. RUDOLPH, Jr. Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRO: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006 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 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 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 after March 31, 2006. 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: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 1958, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-0565.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

1. Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes methods of computing a corporation’s net operating loss deduction and their application of the deduction to prior and subsequent taxable years on taxable net income as authorized by KRS 141.011 and 141.200(11)(b).
(b) The necessity of this administrative regulation: This admin-
Section 1. Gross Receipts. The following are examples of activities that result in the assignments of gross receipts to Kentucky and are included in the numerator, if the receipts are business income:

(1) Activities that produce "gross receipts" as defined under KRS 139.050(1);
(2) The sale of real property located in Kentucky;
(3) The lease, rental or other use of real property located in Kentucky;
(4) The provision of services performed entirely in Kentucky during the tax period;
(5) The provision of services performed within and without Kentucky during the tax period based on the ratio which the time spent in performing such services in Kentucky bears to the total time spent in performing such services everywhere;
(6) Intangible property received by a business with a commercial domicile in Kentucky;
(7) Intangible property, if the intangible has acquired a Kentucky business situs;
(8) Franchise fees received from a franchisee located in Kentucky; and
(9) The distributive share of net income received from a general partnership that is required to file a Kentucky income tax return under the provisions of KRS 141.206.

Section 2. Assignment of Sales to Kentucky. (1) Sales of real or tangible personal property are assigned to Kentucky if the property is in Kentucky or is shipped or delivered to a purchaser in Kentucky.
(2) Sales of goods destined for delivery outside of Kentucky shall not be assigned to Kentucky, irrespective of method of shipment or delivery.
(3) Sales of tangible personal property to the U.S. Government are assigned to Kentucky if the property is shipped from Kentucky.
(4) Receipts from intangibles are assigned to Kentucky if the corporation's commercial domicile is in Kentucky or the intangible has acquired a Kentucky business situs. Examples of receipts from intangibles which are deemed to have acquired a Kentucky business situs are franchise fees from a franchisee located in Kentucky and a corporation's Kentucky distributive share of net income from a general partnership doing business in Kentucky.
(5) Rents or royalties from real or tangible personal property are assigned to Kentucky if the property is located in Kentucky or in the case of mobile property the rent is assigned to Kentucky, if the lessee's base of operations for the property is in Kentucky.
(6) Receipts from the performance of services are assigned to Kentucky if the services are performed entirely in Kentucky, or the services are performed both within and without Kentucky but a greater portion is performed in Kentucky than in any other state based on cost of performance. If the corporation has income from a general partnership, the distributive share of income shall be included in the sales factor. The denominator is the total distributive share; the numerator is the amount of the distributive share apportioned to Kentucky pursuant to KRS 141.206(9).

Section 3. Receipts from intangible property are assigned to Kentucky, regardless of the corporation's or general partnership's commercial domicile, if possession and control of the intangible personal property is localized in connection with a trade or business, creating business situs with Kentucky, so that substantial use or value attaches to the intangible property in Kentucky. In determining if possession and control is localized in connection with a trade or business, the following factors shall be considered:
(1) The use of the intangible property in the continuous course of the trade or business in Kentucky;
(2) The permanency of the location of the intangible property in Kentucky;
(3) The independent control and management of the intangible property in Kentucky;
(4) The possession and control of the intangible property in Kentucky by an independent local agent for the purpose of transacting a permanent business; and
(5) The establishment or use of the intangible property in Kentucky in a manner that attaches substantial use and value of the intangible property to the Kentucky trade or business.

Section 4. This administrative regulation shall apply to tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LHC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 27, 2006 at 1 p.m. in Training Room A, 3rd Floor, 200 Fair Oaks, 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 the required 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 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 this proposed administrative regulation. Written comments shall be accepted through March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6755.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation further explains the calculation of the sales factor necessary to apportion Kentucky income for multistate corporations.
(b) The necessity of this administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization plan. It explains the how to calculate a necessary factor for income apportionment.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.030(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer all tax statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: Because of changes to Kentucky corporation income tax calculations, this regulation is necessary to provide guidance for the calculation of the sales factor.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. These questions
do not apply.
   (b) The necessity of the amendment to this administrative regulation: N/A
   (c) How the amendment conforms to the content of the authorizing statutes: N/A
   (d) How the amendment will assist in the effective administration of the statutes: N/A
   (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any multistate corporation operating both within and without Kentucky.
   (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: This new administrative regulation provides further guidance to corporation income tax payers regarding how to make necessary apportionment calculations.
   (g) 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: 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 fee or funding increase will be necessary.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It does not.
   (9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers who apportion income.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 16:290. Apportionment; property factor.

RELATES TO: KRS 141.120
STATUTORY AUTHORITY: KRS 131.030(1)
EFFECTIVE: February 10, 2006

NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.120(3) requires that all business income of multistate corporations be apportioned to Kentucky by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus a double weighted sales factor and the denominator of which is four (4). This regulation provides guidelines for determining the property factor of a multistate corporation.

Section 1. Definitions. (1) "Annual rent" means the actual sum of money or other consideration payable, directly or indirectly, by the corporation for its benefit for the use of the property and includes any amount payable for the use of real or tangible personal property whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise, any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, but does not include amounts paid as service charges, such as utilities, janitor services, or incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(2) "Annual rental rate" means:
   (a) If the property is rented for a twelve (12) month period, the annual rent.
   (b) If the property is rented for less than a twelve (12) month period, the net rent paid for the actual period of rental.
   (c) If the property is rented for a period of twelve (12) or more months, and the current tax period covers a period of less than twelve (12) months due, for example, to a reorganization or change in accounting period, the net rent paid for the short tax period shall be annualized.
   (3) "Net annual rental rate" means the total annual rental paid, less total annual rental received from subrentals.
   (4) "Original cost" means the basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the corporation and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.

Section 2. General. The property factor includes all real and tangible personal property owned or rented and used during the taxable year, except coin, currency, and pollution control property located in Kentucky for which a tax exemption certificate is issued by the Department of Revenue.

Section 3. Property Used. (1) Property shall be included in the property factor if it is actually used or is available for or capable of being used during the taxable year. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are included in the factor.
   (2) Inventory in process shall be included in the factor. Property or equipment under construction during the taxable year shall be excluded from the factor until it is actually used or is available for or capable of being used during the taxable year.
   (3) Property used shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale.

Section 4. Consistency in Reporting. (1) Year-to-year consistency. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property or of excluding property from or including property in the property factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.
   (2) State-to-state consistency. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports are not uniform in the valuation of property and in the exclusion of property from or the inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

Section 5. Property Factor: Numerator. (1) Property in transit between a buyer and seller shall be included in the numerator according to the state of destination. Property in transit between locations of the same corporation shall be considered at the destination location for purposes of the property factor.
   (2) The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without Kentucky during the taxable year shall be determined, for purposes of the numerator of the factor, on the basis of total time within the state during the taxable year. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

Section 6. Valuation of Owned Property. (1) Property owned by the corporation shall be valued at original cost.
   (2) Capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state purposes.
   (3) If the original cost of property is not ascertainable, nominal, or zero, the property shall be included in the factor at its fair market value at the date of acquisition by the corporation.
   (4) Inventory shall be included in the factor by the valuation method used for federal income tax purposes.
   (5) Property acquired by gift or inheritance shall be included in
the factor at its basis for depreciation for federal income tax purposes.

Section 7. Rented Property. (1) Property rented by a corporation shall be valued at eight (8) times the net annual rental rate. If this calculation results in a negative value or a clearly inaccurate valuation, any other method which will properly reflect the value may be required by the department or may be requested by the corporation, except that the net annual rental rate shall not be less than the total annual rental rate multiplied by a fraction, the numerator of which is the fair market value of rent applicable to rental property used by the corporation divided by the fair market value of rent applicable to all of the corporation's rental property.

(2) If property is used at no charge or rented for a normal rate, the property shall be included in the property factor on the basis of the fair market value of rent for comparable property in the area.

(3) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the corporation regardless of whether the corporation is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. The original cost of a leasehold improvement shall be included in the factor.

Section 8. Monthly Averaging of Property. Averaging by monthly values shall apply if:

(1) Substantial fluctuations in the values of the property exist during the tax period;

(2) Property is acquired after the beginning of the tax period or disposed of before the end of the tax period; or

(3) Substantial fluctuations in the percentage of property used in Kentucky exist during the tax period.

Section 9. This administrative regulation shall be effective for tax periods beginning on or after January 1, 2005.

R. B. RUDOLPH, Jr., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed new administrative regulation shall be held on March 28, 2006 at 1 p.m. in Training Room A, 3rd Floor, 200 Fair Oaks, 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 the required 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person noted below.

CONTACT PERSON: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 195B Capitol Annex, Frankfort, Kentucky 40601, (502) phone 564-4240, fax (502) 564-6765.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation further explains the calculation of the property factor necessary to apportion Kentucky income for multisate corporations.

(b) The necessity of this administrative regulation: This administrative regulation provides guidance necessary for the implementation of the Governor's tax modernization plan. It explains the how to calculate a necessary factor for income apportionment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.030(1) authorizes the Department of Revenue to promulgate administrative regulations necessary to administer all tax statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Because of changes to Kentucky corporation income tax calculations, this regulation is necessary to provide guidance for the calculation of the property factor.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation. These questions do not apply.

(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: Any multisate corporation operating both within and without Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new administrative regulation provides further guidance to corporation income tax payers regarding how to make necessary apportionment calculations.

(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: 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 fee or funding increase will be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation, because, as a general corporation income tax provision, this regulation would apply equally to all taxpayers who apportion income.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(New Administrative Regulation)

103 KAR 18:300. Calculation of taxable net income for disregarded single member LLCs.

RELATES TO: KRS 141.010
STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4), 141.018

NECESSITY, FUNCTION AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any and all provisions of KRS Chapter 141. KRS 141.018 requires the department to promulgate administrative regulations necessary to explain or implement 2005 Ky Acts Ch. 168 relative to the imposition of the tax assessed under this chapter on individuals, the passed-through income of entities taxable under KRS 141.040, and any related item of income, deduction, or credit. The Kentucky corporation income tax law requires limited liability entities to pay tax on net income because the entity is doing business in Kentucky. This regulation explains how net taxable income should be calculated for single member limited liability companies that are disregarded for federal income tax purposes.
VOLUME 32, NUMBER 9 – MARCH 1, 2006

Section 1. Definitions. (1) "Single corporation" means a corporation defined in KRS 141.010(24) or a corporation that is the single member of a single LLC.
(2) "Single member LLC" means a single member limited liability company that is disregarded as an entity separate from its member for federal income tax purposes.

Section 2. In General; Doing Business. For taxable years beginning after December 31, 2004, Kentucky imposes a tax on the net income of certain business entities doing business in Kentucky. In the case of a single member LLC, if the single member LLC is doing business in Kentucky, the single corporation also is deemed to be doing business in Kentucky. Similarly, if the single corporation is doing business in Kentucky, any single member LLC of the single corporation is also deemed to be doing business in Kentucky.

Section 3. Calculation of Net Income. When calculating Kentucky taxable net income, the single corporation and any single member LLCs shall be treated as one corporation in determining taxable income and the applicable apportionment factor.

Section 4. The provisions of this administrative regulation shall apply to taxable years beginning on or after January 1, 2005 except where noted in Section 2.

R. B. RUDOLPH, JR., Secretary
APPROVED BY AGENCY: February 8, 2006
FILED WITH LRC: February 10, 2006 at 10 a.m.
PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 31, 2006 at 1 p.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 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 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 through March 31, 2006. 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: Leslie Saunders, Division of Legislative Services, Finance and Administration Cabinet, Room 155B, Capitol Annex, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-9555.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leslie Saunders
(1) Provide a brief summary of.
(a) What this administrative regulation does: The Kentucky corporation income tax law requires limited liability entities to pay tax on net income because the entity is doing business in Kentucky. This regulation explains how net taxable income should be calculated for single member limited liability companies that are disregarded for federal income tax purposes.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement tax modernization enacted by the 2005 Kentucky General Assembly and comply with KRS 131.130(1), 141.018, and 141.050(4).
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.018 requires the Department of Revenue to promulgate administrative regulations relative to the imposition of the tax assessed under KRS Chapter 141 on individuals and entities taxable under KRS 141.040. KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations to effectively carry out the provisions of KRS Chapter 141.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation explains how net taxable income should be calculated for single member limited liability companies that are disregarded for federal income tax purposes.
(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: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer that is a single member LLC or who is the member of a single member LLC will be affected. Revenue will be affected to the extent that it administers corporation income tax.

(3) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation describes how to do calculations necessary to correctly compute income tax on disregarded entities.

(4) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: 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.

(5) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Revenue agency funds.

(6) 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.

(7) TIERING: Is tiering applied? Tiering was not applied because the requirements of this regulation relating to Kentucky individual income taxpayers who own a pass-through entity subject to the corporation income tax imposed by KRS 141.040 apply to every applicable taxpayer.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Income Taxation
(NEW ADMINISTRATIVE REGULATION)

103 KAR 18:160. Partnership Income, credits, and payments subject to withholding.

RELATES TO: KRS 141.206
STATUTORY AUTHORITY: KRS 141.050(4), 141.206
NECESSITY, FUNCTION, AND CONFORMITY: KRS 141.050(4) requires the Department of Revenue to promulgate administrative regulations and prescribe the forms and reports necessary to the proper administration of any provisions of KRS Chapter 141. KRS 141.206 requires the department to promulgate administrative regulations governing the filing of tax returns and withholding on certain types of payments. This administrative regulation prescribes procedures for withholding Income tax on net distributive share income and filing a composite return by a general partnership.

Section 1. Definitions. (1) "Allowable adjustments" means deductions paid by the general partnership and allowable as an ad-
justment to gross income by the individual partner under KRS 141.010(10) and apportioned to Kentucky under KRS 141.206;

(2) "Lower-tier partnership" means a general partner that is itself a general partnership.

(3) "Net distributive share income" means the general partner's pro rata share of the total of the general partnership's items of income or loss apportioned to Kentucky under KRS 141.206, minus allowable adjustments. Net distributive share income includes ordinary income, capital gains or losses, rents, dividends, interest, and guaranteed payments.

Section 2. Withholding. (1) For taxable years ending on or after December 31, 2004, every general partnership required to file an annual return under KRS 141.206(2) shall withhold income tax at the maximum tax rate provided in KRS 141.020 on the net distributive share income of each nonresident individual partner.

(2) The general partnership shall be liable to Kentucky for the payment of the tax required to be withheld and shall recover the amount of tax withheld from the nonresident individual partner.

(3) Credits allowed by KRS 141.020(5) and 141.020(5)(c) that are distributed by a general partnership to the nonresident individual partner may be deducted from the amount to be withheld if the credit is reasonably expected to be claimed in the current tax year. For example, the recycling and composting credit allowed under KRS 141.390 is limited to ten (10) percent of the credit in the year approved or twenty-five (25) percent of the individual's tax liability, whichever is less. The nonresident individual partner may file a return to claim the remaining credit in future years.

(4) Withholding shall not be required if:

(a) The individual partner's net distributive share income is less than $1,000;

(b) The general partnership demonstrates that the individual partner's net distributive share income is not subject to Kentucky income tax;

(c) The general partnership is a publicly-traded partnership as defined by 26 U.S.C. Section 7704(b) of the Internal Revenue Code that is treated as a partnership for the purposes of the Internal Revenue Code; or

(d) The individual partner elects to be included in a composite return filed by the general partnership under Section 3.

(5) If withholding is required, the general partnership on or before the 15th day of the fourth month after the end of its taxable year shall:

(a) File with the Kentucky Revenue Cabinet, Revenue Form 40A201, "740NP-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income Transmittal Report" reporting the number of nonresident individual partners, the total net distributive share income subject to withholding, total allowable credits, and the total amount of Kentucky income tax be withheld;

(b) Provide each nonresident individual partner with Revenue Form 40A200, "PTE-WH, Kentucky Nonresident Income Tax Withholding on Net Distributive Share Income" or an approved substitute statement showing the partner's net distributive share income subject to withholding, allowable credit and the amount of Kentucky income tax withheld; and

(c) Remit the tax withheld.

(6) A lower-tier general partnership shall be subject to these same requirements to withhold and pay income tax on the net distributive share income of each of its nonresident Individual partners.

Section 3. Composite Return. (1) A nonresident individual partner of a general partnership may elect to be included in the composite income tax return by submitting a written statement to the partnership thirty (30) days before the time prescribed for filing the partnership's return.

(2) A general partnership may file a composite income tax return on behalf of electing nonresident individual partners. The partnership shall for each nonresident partner electing to be included in the composite return:

(a) Compute the amount of tax due by multiplying the partner's net distributive share income by the highest marginal rate provided in KRS 141.020;

(b) File with the Department of Revenue, Form 740NP, Ken-
131.130(1), 141.018 and 141.050(4) authorize the Department of Revenue to promulgate administrative regulations to administer the provisions of KRS Chapter 141. This administrative regulation is necessary to describe procedures for filing of returns by partnerships in order to comply with KRS 141.206.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws. KRS 141.206 requires the Department of Revenue to promulgate administrative regulations for general partnerships governing the filing of returns and withholding.

(d) How this administrative regulation currently assets or will assist in the effective administration of the statutes: This administrative regulation explains when and how to withhold on nonresident individual general partners and the procedures necessary for filing a composite income tax return on behalf of electing nonresident individual general partners.

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

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

(b) The necessity of the amendment to this administrative regulation: 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: General partnerships with nonresident individual partners are affected by this regulation. Also, tax preparers filing general partnership returns which have nonresident individual general partners will be affected.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation will provide information to tax preparers, general partners, and general partnerships of the requirement of withholding of Kentucky income tax on nonresident individual general partners' distributive income and the procedure to file a composite return if elected by a nonresident individual general partner.

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

(a) Initially: 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: Funds provided by the Department of Revenue.

(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 because the requirements of this regulation apply only to nonresident individual general partners of a general partnership, a basically homogenous group without any definable tiers.
(3) Physican for boxyng and kickboxing show: $250.

(4) Referees for boxing and kickboxing shows: seventy-five (75) dollars each.

Section 6. If a show or exhibition is cancelled, with less than twenty-four (24) hours' notice to the authority, officials shall be paid one-half (1/2) the compensation required by this administrative regulation.

Section 7. The proposed card for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be immediately filed with the authority.

Section 8. All contestants' compensation agreements shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 9. (1) Before the commencement of a show, all changes or substitutions in the card shall be:

(a) Announced from the ring; and

(b) Posted in a conspicuous place at the ticket office.

(2) In the event of a change in the card, a purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the tickets, provided the request is made before the commencement of the show.

Section 10. Within twenty-four (24) hours of the conclusion of a show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the authority the form, "Boxing Event Report" (206).

Section 11. The area between the ring and the first row of spectators on all four (4) sides shall be under the exclusive control of the authority. No alcohol or smoking shall be allowed in the area under the control of the authority.

Section 12. (1) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring.

(2) A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for boxers and kickboxers to enter the ring and the spectator area.

Section 13. The ring specifications shall be as follows:

(1) A bout shall be held in a four (4) sided roped ring with the following specifications:

(a) The floor of the ring inside the ropes shall not be less than sixteen (16) feet square;

(b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;

(c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and

(d) The ring shall have steps to enter the ring on two (2) sides.

(2) The ring shall be formed of ropes with the following specifications:

(a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

1. Twenty-four (24) inches;

2. Thirty-six (36) inches; and

3. Forty-eight (48) inches;

(b) A fourth rope may be used if it is approved by the inspector or employee of the authority prior to the commencement of the show.

(c) The ropes shall be at least one (1) inch in diameter;

(d) The ropes shall be wrapped in a clean, soft material and drawn taut;

(e) The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

(3) The ropes shall be supported by ring posts that shall be:

(a) Made of metal or other strong material;

(b) Not less than three (3) inches in diameter;

(c) At least eighteen (18) inches from the ropes.

(4) The ring floor shall be padded or cushioned with a clean, soft material that:

(a) Is at least one (1) inch in thickness using thick slow recovery foam matting;

(b) Extends over the edge of the platform; and

(c) Is covered with a single canvas or a similar material stretched tightly; and

1. Is clean, sanitary, dry, and free from:

2. Grit;

3. Dirt;

4. Resin;

5. Blood; and

6. Any other foreign object or substance.

(5) A ring rope shall be attached to a ring post by turnbuckles that are padded with a soft vertical pad at least six (6) inches in width.

Section 14. A bell or horn shall be used by the timekeeper to indicate the time.

Section 15. In addition to the ring and ring equipment, the promoter shall supply the items listed in this section, which shall be available for use as needed.

(1) A public address system in good working order.

(2) Judges and timekeepers chairs elevated sufficiently to provide an unobstructed view of the ring and the ring floor.

(3) Items for each contestant's corner, to include:

(a) A stool or chair;

(b) A clean bucket;

(c) Towels; and

(d) Rubber gloves.

(4) A complete set of numbered round-cards, if needed.

(5) A clean stretcher and a clean blanket, placed under or adjacent to the ring throughout each bout.

(6) First aid oxygen apparatus or equipment.

(7) Gloves for each boxer or kickboxer.

Section 16. A scale used for any weigh-in shall be approved in advance by the inspector or employee of the authority.

Section 17. A promoter shall safeguard and provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to ensure to the satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 18. All emergency medical personnel and portable medical equipment shall be stationed at ringside during the event. There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests. If the ambulance is required to leave the event for any reason, no boxing or kickboxing will be allowed to continue until an ambulance is once again present and medical personnel are at ringside.

Section 19 There shall be at least one (1) physician licensed by the authority at ringside before a bout is allowed to begin. The physician shall have at ringside any medical supplies reasonably anticipated to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing contest.

Section 20. A promoter shall provide insurance for the boxer or kickboxer for any injuries sustained in the boxing event. The minimum amount of coverage per boxer or kickboxer shall be $5,000 health and $5,000 accidental death benefits. A certificate of insurance coverage must be provided to the authority no less than two (2) business days before the event.

Section 21. All judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:
(1) Three (3) judges;
(2) One (1) timekeeper;
(3) One (1) physician. Two (2) physicians shall be assigned to any bout designated a championship bout by a national sanctioning body recognized by the authority; and
(4) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 22. Decisions shall be rendered as follows:
(1) If a contest lasts the scheduled limit, the winner of the contest shall be decided by:
(a) A majority vote of the judges if three (3) judges are employed to judge the contest; or
(b) A majority vote of the judges and the referee if two (2) judges are employed to judge the contest.
(2) Decisions shall be based primarily on boxing or kickboxing effectiveness, with awards for display of the following attributes, and points deducted for an opposite showing:
(a) Clean, forceful hitting;
(b) Aggressiveness;
(c) Defensive work; and
(d) Ring generalship.

Section 23. Scoring shall be as follows:
(1) Each round in boxing or kickboxing shall be accounted for on the scorecard, using the ten (10) point must system. Scoring shall be expressed in ratio of merit and demerit.
(2) Score cards shall be:
(a) Signed;
(b) Handed to the referee in the ring; and
(c) Filed by him with the inspector or employee of the authority in attendance.
(3) The decision shall then be announced from the ring.

Section 24. Bouts and rounds shall be as follows:
(1) Boxing or kickboxing rounds shall:
(a) Be of either two (2) or three (3) minutes duration; and
(b) Have not less than a one (1) minute rest period between rounds.
(2) A boxing or kickboxing bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

Section 25. Boxing gloves shall meet the requirements established in this section.
(1) For boxing, contestants shall wear boxing gloves which shall be of the same weight for each contestant and:
(a) Dry, clean, and sanitary;
(b) Furnished by the promoter;
(c) Of equal weight, not to exceed twelve (12) ounces;
(d) A minimum of eight (8) ounces for a contestant weighing no more than 154 pounds;
(e) A minimum of ten (10) ounces for a contestant weighing over 154 pounds; and
(f) Thimbles or thumb-attached.
(2) For kickboxing, contestants shall wear boxing gloves which shall be of the same weight for each contestant and:
(a) Clean and sanitary;
(b) Furnished by the promoter;
(c) Of equal weight, not to exceed twelve (12) ounces;
(d) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds;
(e) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds.
(3) Gloves shall be new for main events and for contests and exhibitions scheduled for ten (10) or more rounds.
(4) Gloves shall be thumbless or thumb-block gloves approved by the authority.
(5) A kick boxing contestants shall wear padded kick boxing boots approved by the authority.
(6) Gloves for all main events shall be dry and free from defects and shall be put on in the ring, subject to the discretion of the inspector or employee of the authority.
(7) Breaking, roughing, or twisting of gloves shall not be permitted.
(8) The laces on gloves shall be tied on the back of the wrist and taped.

Section 26. Bandages meet the requirements set forth in this section.
(1) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kick boxer's hands.
(2) Bandages shall not be more than two (2) inches wide and twelve (12) yards in length for each hand.
(3) Medical adhesive tape not more than one (1) inch in width may be used to hold bandages in place.
(4) Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch.
(5) Adhesive tape not to exceed one (1) layer shall be crossed over the back of the hand for its protection.
(6) Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.
(7) Hand wraps shall be applied in the dressing room in the presence of an inspector, official or employee of the authority. The inspector, official or employee of the authority shall sign the hand wrap and the tape around the strings of the gloves.

Section 27. The rules governing knockdowns shall be as follows:
(1) If a contestant is knocked to the floor by his opponent, or falls from weakness or other causes, his opponent shall:
(a) Immediately retire to the farthest neutral corner of the ring; and
(b) Remain there until the referee completes his count or signals a resumption of action.
(2) The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm when the contestant is down.
(3) The referee shall pick up the count from the timekeeper.
(4) If a contestant fails to rise to his feet before the count of ten (10), the referee shall declare him the loser by waving both arms to indicate a knockout.
(5) If a contestant who is down rises to his feet during the count, the referee may, if he deems it necessary, step between the contestants long enough to assure himself that the contestant just arisen is in condition to continue the bout.
(6) If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he left off.
(7) At the discretion of the referee, a standing eight (8) count may be used.
(8) The contestant scoring the knockdowns shall be the winner by a technical knockout.
(9) If a contestant is knocked down three (3) times during a round, the contest shall be stopped.
(10) If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare him knocked out.

Section 28. Failure to resume a bout.
(1) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count him out the same as if he were down in that round.
(2) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his feet before the expiration of ten (10) seconds, the referee may count him out as if he were down.

Section 29. A contestant shall be considered "down" when:
(1) Any part of his body other than his feet is on the ring floor;
(2) He is hanging helplessly over the ropes and in the judgment of the referee, he is unable to stand; or
(3) He is rising from the "down" position.

Section 30. (1) The following shall be considered fouls:
(a) Hitting below the belt;
(b) Hitting an opponent who is down or who is getting up after having been down;
(c) Holding an opponent and deliberately maintaining a clinch;
(d) Holding an opponent with one (1) hand and hitting with the other;
(e) Butting with head or shoulder or using the knee;
(f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow, and all backhand blows except for those backhand blows allowable in kickboxing;
(g) Hitting, or flicking, with the glove open or thumbing;
(h) Wristing, or roughing, against the ropes;
(i) Purposely going down without having been hit;
(j) Deliberately striking at the part of opponent's body over the kidneys;
(k) Use of the pivot blow, or rabbit punch, or any physical action which may injure a contestant;
(l) Biting of the opponent;
(m) Use of abusive or profane language; or
(n) Failure to obey the referee.
(2) (a) A contestant who commits a foul may be disqualified and the decision awarded to his opponent by the referee.
(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul which incapacitates his opponent.
(3) Any contestant committing a foul may be issued a violation by the inspector or employee of the authority.
(4) (a) If a bout is temporarily stopped by the referee due to accidental fouling, the referee, with the aid of the physician, if necessary, shall decide whether the contestant who has been fouled is in physical condition to continue the bout.
(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, he shall order the bout resumed after a reasonable time, the time to be set by the referee, but not exceeding five (5) minutes.
(5) (a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.
(b) If the foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the contest to be subsequently stopped, the contest shall be scored on the basis of the judges' scorecards.

Section 31. The following shall be prohibited:
(1) "Battle royal"; and
(2) Use of excessive grease or any other substance that may handicap an opponent.

Section 32. (1) A boxer or kickboxer who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician licensed by the authority, the authority decides the action is necessary to protect the health and welfare of the boxer.
(2) A boxer or kickboxer who has suffered six (6) consecutive defeats by knockout shall not be allowed to box again until he has been investigated by the authority and examined by a physician licensed by the authority.
(3) A boxer or kickboxer whose license is under suspension in any other jurisdiction may be allowed to participate in any boxing or kickboxing only after review and approval of the case by the inspector or employee of the authority.
(4) Any boxer or kickboxer who has been knocked out shall be prohibited from all physical contact for sixty (60) days.
(5) Any boxer or kickboxer who has suffered a technical knockout shall be prohibited from physical contact for thirty (30) days.
(6) A boxer or kickboxer shall receive a mandatory seven (7) day rest period after competing in an event. Day one (1) of the rest period shall commence on the first day following the event.

Section 33. No boxer or kickboxer shall engage in any boxing or sparring with a member of the opposite sex.

Section 34. (1) Unless special permission otherwise is granted by the authority, a boxer or kickboxer:
(a) Under nineteen (19) years of age is permitted to box or kickbox no more than six (6) rounds;
(b) Nineteen (19) years of age is permitted to box or kickbox no more than eight (8) rounds; and
(c) Twenty (20) years of age is permitted to box or kickbox no more than ten (10) rounds.
(2) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds.
(3) No person over the age of thirty-nine (39) shall box or kickbox without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled bout.

Section 35. Contestsants shall submit HIV and Hepatitis B and C test results at or before prefight physical. The results of these tests shall be no more than 180 days old. No one with positive test results shall be allowed to fight.

Section 36. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 37. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another and shall not change his ring name nor be announced by name other than that which appears on his license except upon approval of the inspector or employee of the authority.

Section 38. A contestant shall be clean and neatly attired in proper ring attire and the trunks of opponents shall be of distinguishing colors.

Section 39. A contestant shall not use a belt that contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 40. A contestant shall wear shoes during a bout and the shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

Section 41. Contestsants shall wear a properly fitted:
(1) Groin protector;
(2) Kidney protector, if available, and
(3) Mouthpiece.

Section 42. Whenever a contest is ended by reason of fouling or failure to give an honest exhibition of skill, as determined by the inspector or an employee of the authority, the compensation of the offending contestant shall be withheld by the promoter and shall be disposed of as may be ordered by the authority.

Section 43. The authority may request at any time a contestant submit to a drug screen for controlled substances at the contestant's expense. If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority may suspend or revoke the license of the contestant, or the authority may impose a fine upon the contestent, or both.

Section 44. (1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

<table>
<thead>
<tr>
<th>CLASS</th>
<th>WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flyweight</td>
<td>Up to 140 lbs.</td>
</tr>
<tr>
<td>Bantamweight</td>
<td>Up to 153 lbs.</td>
</tr>
<tr>
<td>Jr. Featherweight</td>
<td>Up to 168 lbs.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Featherweight</th>
<th>Up to 126 lbs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jr. Lightweight</td>
<td>Up to 130 lbs.</td>
</tr>
<tr>
<td>Lightweight</td>
<td>Up to 135 lbs.</td>
</tr>
<tr>
<td>Jr. Welterweight</td>
<td>Up to 140 lbs</td>
</tr>
<tr>
<td>Welterweight</td>
<td>Up to 147 lbs.</td>
</tr>
<tr>
<td>Jr. Middleweight</td>
<td>Up to 154 lbs.</td>
</tr>
<tr>
<td>Middleweight</td>
<td>Up to 160 lbs.</td>
</tr>
<tr>
<td>Light Heavyweight</td>
<td>Up to 175 lbs.</td>
</tr>
<tr>
<td>Cruiserweight</td>
<td>Up to 195 lbs.</td>
</tr>
<tr>
<td>Heavyweight</td>
<td>Over 195 lbs.</td>
</tr>
</tbody>
</table>

(2) After the weigh-in of a contestant competing in a bout or exhibition:
(a) Change in weight in excess of two (2) pounds is not permitted for any contestant who weighed in at 145 pounds or less.
(b) Change in weight in excess of three (3) pounds is not permitted for any contestant who weighed in at over 145 pounds.

Section 45. A contestant in a show held under the jurisdiction of the authority shall weigh in stripped, at a time set by the authority. The inspector or an employee of the authority and a representative of the promoter conducting the show shall be in attendance to record the official weights. A contestant shall not be allowed to fight more than one (1) class above their weight.

Section 46. On the day of the show, the official physician shall make a physical examination of each contestant.

Section 47. A contestant shall immediately notify the promoter and the authority if, as a result of illness or for any other reason, he is unable to participate in a show in which he has entered into a contract to engage, and shall immediately file with the authority the physician’s certificate verifying the injury or illness or other verified evidence, as the authority may require to establish valid reasons for his failure to participate. The authority may require a contestant to submit to an examination if deemed necessary to establish the true facts of the contestant’s failure to participate.

Section 48. The promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a boxing or kickboxing bout is being held. The notice shall include the date, time, and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 49. The following requirements apply to all bouts between female contestants:
(1) The maximum number of rounds shall be ten (10);
(2) The length of each round shall be two (2) minutes;
(3) The rest period between rounds shall be one (1) minute;
(4) A contestant shall not wear face cosmetics during the bout;
(5) A contestant with long hair shall secure her hair with soft and nonabrasive material;
(6) Weight classes shall be those established in Section 42 of this administrative regulation;
(7) A contestant shall wear a properly-fitted:
   (a) Breast protector;
   (b) Groin protector;
   (c) Kidney protector if available, and
   (d) Mouthpiece;
(8) The gloves shall be properly fitted and the sizes shall be as follows:
   (a) Of equal weight: not to exceed twelve (12) ounces;
   (b) A minimum of eight (8) ounce gloves shall be worn by a contestant weighing no more than 154 pounds;
   (c) A minimum of ten (10) ounce gloves shall be worn by a contestant weighing over 154 pounds; and
   (9) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

Section 50. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for License as a Boxer", (2/06),
(b) "Boxer's Federal Identification Card Application", (2/06);
(c) "Boxing Show Notice Form", (2/06); and
(d) "Boxing Event Report", (2/06).

(2) These forms may be inspected, obtained, or copied, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
JOHN W. CLAY, Deputy Secretary
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16th, 2006, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Anyone who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until March 31st, 2006. 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: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-9369.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth detailed rules governing the conduct of professional boxing and kick boxing events. Perhaps, most importantly, the regulation requires adequate medical equipment and personnel to be on site at all times during these events.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that boxing and kick boxing events in the Commonwealth are conducted in such a manner as to ensure the health and safety of all participants.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate administrative regulations necessary for the performance of its regulatory functions. These functions include, as set forth in KRS 229.171, the responsibility to protect the athletes who participate in events under the Authority’s jurisdiction, as well as to provide the professional staff necessary to properly regulate those events.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in detail the rules governing the conduct of participants at professional boxing and kick boxing events taking place in the Commonwealth.
(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: All licensed athletes who participate in boxing and
kick boxing events, and the officials who regulate, those events, will be impacted by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The licensed participants at boxing and kick boxing events will be subject to requirements concerning dress and protective gear, ring specifications, prefight physicals, the mandatory presence of medical equipment and personnel, and other matters designed to ensure these events are conducted in a safe and fair manner.

(5) Provide an estimate of how much it will cost to implement this regulation:
   (a) Initially: Minimal.
   (b) On a continuing basis: Minimal

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees or funding will be required 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 increases the fee for an annual boxing or kick boxing license to $20, from the previous fee of $10.

(9) TIERING: Tiering is not applied in this administrative regulation, as there is no reason to discriminate among boxing participants as a class. There are some alterations in the rules for women boxers.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(New Administrative Regulation)

201 KAR 27:016. General requirements for mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180(1)

STATUTORY AUTHORITY: KRS 229.071(2), 229.091(1), 229.151(1), 229.171(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(2) authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions. To be conducted, held, or given within the Commonwealth, KRS 229.151(1) grants the Kentucky Boxing and Wrestling Authority regulatory oversight over professional boxing, wrestling, and other professional full-contact competitive bouts within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. KRS 229.071(2) authorizes the authority to grant annual licenses to applicants for participation in professional matches if the authority judges that the financial responsibility, experience, character, and general fitness of the applicant are such that participation by the applicant is in the public interest. KRS 229.091(1) provides that every licensee shall be subject to the administrative regulations promulgated by the authority. This administrative regulation sets out requirements for mixed martial arts contests subject to state regulation.

Section 1. The authority shall license all persons approved to participate as a professional contestant in a mixed martial arts contest. Participants shall apply for license onsite at prefight physicals have been performed. Applications shall not be mailed to the authority. The license fee for each participant shall be twenty ($20) dollars. All licenses shall expire on December 31 of the year in which they are issued.

Section 2. The schedule for compensation to be paid prior to the commencement of the main event to officials participating in a professional mixed martial arts show shall be as follows:
   (1) Judge for mixed martial arts - $150.
   (2) Timekeeper for mixed martial arts - $100.
   (3) Physician for mixed martial arts - $250.
   (4) Referee for mixed martial arts - $150.

Section 3. Before the commencement of the main event of any mixed martial arts show or exhibition, the promoter of the show or exhibition shall tender to the inspector or an employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials established in Section 2 of this administrative regulation.

Section 4. If a show or exhibition is cancelled with less than twenty-four (24) hours notice to the authority, officials shall be paid one-half (1/2) the compensation required by this administrative regulation.

Section 5. The promoter shall submit a request for a show date no less than thirty (30) calendar days before the requested date for approval by the authority. There shall be no advertising of the event prior to this approval. Once the show date has been approved, all advertisements shall include the promoter's license number.

Section 6. The proposed program for a show shall be filed with the authority at least five (5) business days prior to the date of the show. Notice of any change in a program or any substitutions in a show shall be filed immediately with the authority.

Section 7. All contestant compensation agreements shall be in writing and submitted to the authority for approval not less than five (5) calendar days prior to the date of the proposed show.

Section 8. A contest or exhibition of a mixed martial art shall be conducted pursuant to the official rules for the particular art unless it conflicts with any part of the statutes or regulations. If an official rule conflicts with any part of the statutes or administrative regulations the statute or administrative rule will prevail. The sponsoring organization or promoter shall file a copy of the official rules with the authority along with the thirty (30) day show notice required in Section 5 of this administrative regulation.

Section 9. (1) Before the commencement of a show, all changes or substitutions shall be:
   (a) Announced from the ring; and
   (b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of tickets shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 10. The row nearest the ring on all four (4) sides shall be under the exclusive control of the authority.

Section 11. (1) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all sides of the ring.

(2) A partition, barricade, or similar divider shall be placed:
   (a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and
   (b) Along the sides of the entrance lane for contestants to enter the ring and the spectator area.

Section 12. The ring shall meet the following requirements:
   (1) All ropes shall be held in a four (4) sided roped ring with the following specifications:
      (a) It shall not be less than sixteen (16) feet square inside the ropes;
      (b) The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot;
      (c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor;
      (d) The ring shall have steps to enter the ring on two (2) sides.
(2) The ring shall be formed of ropes with the following specifications:
   (a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:
      1. Twenty-four (24) inches;
      2. Thirty-six (36) inches; and
      3. Forty-eight (48) inches;
   (b) A fourth rope may be used if approved by the inspector or employee of the authority prior to the commencement of the show;
   (c) A rope shall be at least one (1) inch in diameter;
   (d) A rope shall be wrapped in a clean, soft material and drawn taut;
   (e) A rope shall be held in place with vertical straps on each of the four (4) sides of the ring; and
   (f) A rope shall be supported by ring posts that shall be:
      (a) Made of metal or other strong material;
      (b) Not less than three (3) inches in diameter; and
      (c) At least eighteen (18) inches from the ropes.
   (4) The ring floor shall be padded or cushioned with a clean, soft material that:
      (a) Is at least one (1) inch in thickness using slow recovery foam material;
      (b) Extends over the edge of the platform; and
      (c) Is covered with a single canvas or a similar material stretched tightly.
   (5) A ring rope shall be attached to the ring posts by turnbuckles that are padded with a soft vertical pad at least six (6) inches in width.
   (6) A promoter may request an alternate ring design, including fenced area rings consisting of more than four (4) equal sides, provided that the area inside is no less than 256 square feet. This request shall be submitted to the executive director no less than thirty (30) days prior to the event.
   (a) A fenced area used in a contest or exhibition of mixed martial arts shall meet the following requirements:
      1. The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.
      2. The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas, duck or similar material tightly stretched and laced to the platform of the fenced area. Material that tends to gather in lumps or ridges shall not be used.
      3. The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the unarmed combatants.
      4. Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.
      5. The fencing used to enclose the fenced area shall be made of a material that will prevent an unarmed combatant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, including, without limitation, chain link fence coated with vinyl.
   6. Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.
   7. The fenced area shall have two entrances.
   8. There shall be no protrusion or obstruction on any part of the fence surrounding the area in which the unarmed combatants are to be competing.

Section 13. A bell or horn shall be used by the timekeeper in indicating the time.

Section 14. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed:
   (1) A public address system in good working order.
   (2) Judges and timekeepers chairs elevated sufficiently to provide an unobstructed view of the ring and the ring floor.
   (3) Items for each contestant's corner, to include:
      (a) A stool or chair;
      (b) A clean bucket;
      (c) Towels; and
      (d) Rubber gloves.

   (4) A complete set of numbered round-cards.
   (5) A clean stretcher and a clean blanket, placed under or adjacent to the ring, throughout each program.
   (6) First aid oxygen apparatus or equipment.

Section 15. A scales used for any weigh-in shall be approved in advance by the authority.

Section 16. All promoters shall safeguard and provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to ensure to the satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 17. All emergency medical personnel and portable medical equipment shall be stationed at ringside during the event. There shall be resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician on site for all contests. If the ambulance is required to leave the event for any reason, no boxing will be allowed to continue until an ambulance is once again present and medical personnel are at ringside.

Section 18. There shall be at least one (1) physician licensed by the authority at ringside before a bout is allowed to begin. The physician shall have an emergency medical supplies necessary to provide first aid medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing contest.

Section 19. A promoter shall provide insurance for his contestant for any injuries sustained in the mixed martial arts event. The minimum amount of coverage per contestant shall be $5,000,000 health and $5,000,000 accident death benefits. A certificate of insurance coverage must be provided to the authority no less than two (2) business days before the event.

Section 20. A promoter shall submit written notice to a local hospital with an on-call neurosurgeon that a mixed martial arts bout is being held. This notice shall include the date, time, and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 21. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the authority. For each show, the authority shall assign:
   (1) Three (3) judges;
   (2) One (1) timekeeper;
   (3) One (1) physician, except that two (2) physicians shall be assigned to any bout designated a championship bout by a national sanctioning body recognized by the authority; and
   (4) One (1) referee, unless more than thirty (30) rounds are scheduled, in which case a minimum of two (2) referees shall be required.

Section 22. Unless the authority approves an exception:
   (1) A nonchampionship contest or exhibition of mixed martial arts shall not exceed three (3) rounds in duration.
   (2) A championship contest of mixed martial arts shall be five (5) rounds in duration.
   (3) A period of unarmed combat in a contest or exhibition of mixed martial arts shall be five (5) minutes in duration, and a period of rest following a period of unarmed combat in a contest or exhibition of mixed martial arts shall be one (1) minute in duration.

Section 23. Weight classes of unarmed combatants, weight loss after weigh-in:
   (1) Except with the approval of the authority, the classes for unarmed combatants competing in contests or exhibitions of mixed martial arts and the weights for each class are shown in the following schedule:
(2) After the weigh-in of an unarmed combatant competing in a contest or exhibition of mixed martial arts:
(a) Change in weight in excess of two (2) pounds is not permitted for an unarmed combatant who weighed in at 145 pounds or less.
(b) Change in weight in excess of three (3) pounds is not permitted for an unarmed combatant who weighed in at over 145 pounds.
(c) The change in weight described in subsection two shall not occur later than two (2) hours after the initial weigh-in.

Section 24. The following shall be prohibited:
(1) "Battle royal"; and
(2) Use of excessive grease or any other substance that may handicap an opponent.

Section 25. Contestants Repeatedly Knocked Out or Otherwise Defeated. (1) A mixed martial arts contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to box again if, after subjecting him to a thorough examination by a physician, the authority decides the action is necessary in order to protect the health and welfare of the contestant.
(2) A mixed martial arts contestant who has suffered six (6) consecutive defeats by knockout shall not be allowed to compete again until he has been investigated by the authority and examined by a physician.
(3) A mixed martial arts contestant whose license is under suspension in any other jurisdiction may be allowed to participate in any contest only after review and approval of the case by an inspector or employee of the authority.
(4) Any mixed martial arts contestant who has been knocked out shall be prohibited from all physical contact for sixty (60) days.
(5) Any mixed martial arts contestant who has suffered a technical knockout shall be prohibited from physical contact for thirty (30) days.

Section 26. No person over the age of thirty-nine (39) shall box without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled bout.

Section 27. A contestant shall report to and be under the general supervision of the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 28. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another, and shall not change his ring name nor be announced by any name other than that which appears on his license, except upon approval of the inspector or employee of the authority.

Section 29. A contestant shall submit HIV and Hepatitis B and C test results at or before prefight physical. The results of these tests shall be no more than 180 days old. No one with positive test results shall be allowed to fight.

Section 30. No contestant shall compete against a member of the opposite sex.

Section 31. A contestant shall not use a belt which contains any metal substance during a bout. The belt shall not extend above the waistline of the contestant.

Section 32. Proper attire for a mixed martial arts contestant. A mixed martial arts contestant shall:
(1) Be clean, neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing color.
(2) Not wear shoes or any padding on his feet during the contest.
(3) Wear a groin protector
(4) Wear a kidney protector if available
(5) Wear a mouthpiece

Section 33. The authority may request at any time a contestant submit to a drug screen for controlled substances at the contestant's expense. If the drug screen indicates the presence within the contestant of controlled substances for which the contestant does not have a valid prescription, or if the contestant refuses to submit to the test, the authority may suspend or revoke the license of the contestant, or the authority may impose a fine upon the contestant, or both.

Section 34. Method of Judging. (1) Each judge of a contest or exhibition of mixed martial arts shall score the contest or exhibition and determine the winner through the use of the following system:
(a) The better unarmed combatant of a round receives 10 points and his opponent proportionately less.
(b) If the round is even, each unarmed combatant receives 10 points.
(c) No fraction of points shall be given.
(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.
(2) After the end of the contest or exhibition, the announcer shall pick up the scores of the judges from the authority's desk.
(3) The majority opinion is conclusive and, if there is no majority, the decision is a draw.
(4) When the authority's representative has checked the scores, he shall inform the announcer of the decision. The announcer shall then inform the audience of the decision over the speaker system.
(5) Unjudged exhibitions may be permitted with the prior approval of the authority.

Section 35. The following acts constitute fouls in mixed martial arts:
(1) Butting with the head.
(2) Eye gouging of any kind.
(3) Bitting.
(4) Hair pulling.
(5) Fishhooking.
(6) Groin attacks of any kind.
(7) Putting a finger into any orifice or into any cut or laceration on an opponent.
(8) Small joint manipulation.
(9) Sticking to the spine or the back of the head.
(10) Sticking downward using the point of the elbow.
(11) Throat strikes of any kind, including, without limitation, grabbing the trachea.
(12) Clawing, pinching or twisting the flesh.
(13) Grabbing the cavelce.
(14) Kicking the head of a grounded opponent.
(15) Kneeling the head of a grounded opponent.
(16) Stomping a grounded opponent.
(17) Kicking to the kidney with the heel.
(18) Splintering an opponent to the canvas on his head or neck.
(19) Throwing an opponent out of the ring or fenced area.
(20) Holding the shorts of an opponent.
(21) Spitting at an opponent.
(22) Engaging in any unsportsmanlike conduct that causes an injury to an opponent.
(23) Holding the ropes or the fence.
(24) Using abusive language in the ring or fenced area.
(25) Attacking an opponent on or during the break.
(26) Attacking an opponent who is under the care of the referee.
Section 36. (1) If an unarmed combatant fouls his opponent during a contest or exhibition of mixed martial arts, the referee may penalize him by deducting points from his score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his determination on the severity of the foul and its effect upon the opponent.

(2) When the referee determines that it is necessary to deduct a point or points because of a foul, he shall warn the offender of the penalty to be imposed.

(3) The referee shall, as soon as is practical after the foul, notify the judges and both unarmed combatants of the number of points, if any, to be deducted from the score of the offender.

(4) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and may not be deducted from the score of any subsequent round.

Section 37. (1) If a contest or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine whether the unarmed combatant who has been fouled is able to continue or not. If the unarmed combatant’s chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a conclusive impact to the head of the unarmed combatant who has been fouled, the referee may order the contest or exhibition continued after a recuperative interval of not more than five (5) minutes. Immediately after separating the unarmed combatants, the referee shall inform the authority’s representative of his determination that the foul was accidental.

(2) If the referee determines that a contest or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the contest or exhibition shall be declared a no contest if the foul occurs during:

(a) The first two (2) rounds of a contest or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three rounds of a contest or exhibition that is scheduled for more than three rounds.

(3) If an accidental foul renders an unarmed combatant unable to continue the contest or exhibition:

(a) The completed second round of a contest or exhibition that is scheduled for three rounds or less; or

(b) The completed third round of a contest or exhibition that is scheduled for more than three rounds, the outcome shall be determined by scoring the completed rounds, including the round during which the referee stops the contest or exhibition.

(4) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the contest or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition.

(5) Any contestant committing a foul may be issued a violation by the inspector or employee of the authority.

Section 38. A contest of mixed martial arts may end in the following ways:

(1) Submission by:

(a) Physical tap out.

(b) Verbal tap out.

(2) Technical knockout by the referee stopping the contest.

(3) Decision via the scorecards, including:

(a) Unanimous decision.

(b) Split decision.

(c) Majority decision.

(d) Draw, including:

1. Unanimous draw.

2. Majority draw.

3. Split draw.

4. Technical decision.

5. Technical draw.

6. Disqualification.

7. Forfeit.

8. No contest.
mixed martial arts events.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that mixed martial arts events in the Commonwealth are conducted such a manner as to ensure the health and safety of all participants.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate administrative regulations necessary for the performance of its regulatory functions. These functions include, as set forth in KRS 229.171, the responsibility to protect the athletes who participate in events under the Authority's jurisdiction, as well as to provide the professional staff necessary to properly regulate those events.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth in detail the rules governing the conduct of participants at mixed martial arts events taking place in the Commonwealth.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed athletes who participate in mixed martial arts events, and the officials who regulate those events, will be impacted by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The licensed participants at elimination events will be subject to requirements concerning dress and protective gear, ring specifications, prefight physicals, and other matters designed to ensure these events are conducted in a safe and fair manner.

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

(b) Initially: Minimal

(c) On a continuing basis: Minimal

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees or funding will be required 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 itself does not establish any fees.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Effective August 1, 2006)

201 KAR 27:017. Requirements for elimination events.

RELATES TO: KRS 229.021, 229.071(1), 229.081, 229.091, 229.101, 229.131, 229.171, 229.180(1)

STATUTORY AUTHORITY: KRS 229.151(1), 229.171(1), 229.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the Kentucky Boxing and Wrestling Authority to provide the sole direction, management, control, and jurisdiction over all professional boxing, sparring, and wrestling matches or exhibitions to be conducted, held, or given within the Commonwealth. KRS 229.151(1) grants the Kentucky Boxing and Wrestling Authority regulatory oversight over professional boxing, wrestling, and other professional full contact competitive bouts within the Commonwealth. KRS 229.180(1) authorizes the authority to promulgate regulations necessary or expedient for the performance of its regulatory function. This administrative regulation establishes the rules of conduct governing elimination events.

Section 1. To participate in an elimination event, a contestant shall be required to obtain a permit issued by the authority to participate in the event. To obtain the permit, a contestant shall complete and submit to the authority the form "Application for an Elimination Event Contestant Permit", (2006). The contestant shall also pay a fee of five (5) dollars to participate in an elimination event show. The permit and the payment of the fee to participate in an elimination event shall allow participation in that event only.

Section 2. Before the commencement of the main event of any elimination event or exhibition, the promoter of the show or exhibition shall tender to the inspector or employee of the authority a certified check or money order made payable to each official who will officiate the show or exhibition in the amount prescribed by the schedule of compensation for officials set forth in Section 3 of this administrative regulation.

Section 3. The schedule of compensation to be paid by the promoter to any official officiating in the elimination event shall be as follows:

(1) For a judge: $150 per day for shows of fifty (50) or fewer contestants, and $175 per day for shows of over fifty (50) contestants.

(2) For a timekeeper: $150 per day for shows of fifty (50) or fewer contestants, and $175 per day for shows of over fifty (50) contestants.

(3) For a physician: $300 plus five (5) dollars per contestant.

(4) For a referee: $150 dollars per day for shows of fifty (50) or fewer contestants, and $175 dollars per day for shows of over fifty (50) contestants.

Section 4. If a show or exhibition is cancelled, with less than twenty-four (24) hours notice to the authority, an official shall be paid one-half (1/2) of the compensation required by this administrative regulation.

Section 5. The promoter shall submit a request for a show date to the authority for approval no less than thirty (30) calendar days before the requested date. There shall be no advertising of the event prior to approval by the authority. Once the show date has been approved, all advertisement shall include the promoter's license number.

Section 6. (1) Before the commencement of a show, any change or substitution shall be:

(a) Announced from the ring; and

(b) Posted in a conspicuous place at the ticket office.

(2) A purchaser of a ticket shall be entitled, upon request, to a refund of the purchase price of the ticket, provided the request is made before the commencement of the show.

Section 7. The row nearest the ring on all four (4) sides shall be under the exclusive control of the authority.

Section 8. (1) The ring shall have an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats or all four (4) sides of the ring.

(a) A partition, barricade, or some type of divider shall be placed between:

(a) The first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) The entry lane for boxers to enter the ring and the spectator area.
Section 9. The ring specifications shall meet the requirements established in this section.

1. All bouts shall be held in a four (4) sided roped ring with the following specifications:
   (a) The ring shall be at least sixteen (16) feet square inside the ropes.
   (b) The floor of the ring shall extend beyond the ropes for a distance of at least one (1) foot.
   (c) The floor of the ring shall be elevated not more than six (6) feet above the arena floor; and
   (d) The ring shall have steps to enter the ring on two (2) sides.
2. The ring shall be formed of the following specifications:
   (a) There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:
      1. Twenty-four (24) inches;
      2. Thirty-six (36) inches; and
      3. Forty-eight (48) inches;
   (b) A fourth rope may be used if it is approved by the inspector or employee of the authority prior to the commencement of the show;
   (c) The ropes shall be at least one (1) inch in diameter;
   (d) The ropes shall be wrapped in a clean, soft material and drawn taut; and
   (e) The ropes shall be held in place with vertical straps on each of the four (4) sides of the ring.
   (f) The ropes shall be supported by ring posts that shall be:
      (a) Made of metal or other strong material,
      (b) Not less than three (3) inches in diameter; and
      (c) At least eighteen (18) inches from the ropes.
   (4) The ring floor shall be padded or cushioned with a clean, soft material that:
      (a) Is at least one (1) inch in thickness using slow recovery foam matting;
      (b) Extends over the edge of the platform; and
      (c) Is covered with a single tightly stretched canvas or a similar material.
   (5) The ring ropes shall be attached to the ring posts by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 9. A bell or horn shall be used by the timekeeper to indicate the time.

Section 10. In addition to the ring and ring equipment, the promoter shall supply the following items, which shall be available for use as needed:
1. A public address system in good working order;
2. Chairs for the judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;
3. Items for each contestant's corner including:
   (a) A stool or chair;
   (b) A clean bucket;
   (c) Towels; and
   (d) Rubber gloves.
4. A clean stretcher and a clean blanket placed under or adjacent to the ring throughout each program; and
5. First aid oxygen apparatus or equipment.

Section 11. (1) A contestant shall wear boxing gloves that shall be:
   (a) Dry, clean, and sanitary;
   (b) Furnished by the promoter;
   (c) Clearly labeled with the promoter's name;
   (d) Of equal weight;
   (e) Of not less than sixteen (16) ounces; and
   (f) Thimbleless or thumb-attached.
(2) Bandaging of the hands shall not be allowed.
(3) A contestant shall wear properly fitted headgear that shall be:
   (a) Clean and sanitary;
   (b) Furnished by the promoter; and
   (c) Clearly labeled with the promoter's name.
(4) A contestant shall not be allowed to provide substitute gloves or headgear.
(5) An elimination event shall be divided into at least two (2) weight divisions. No open shows shall be permitted.
(6) An elimination event round shall:
   1. Not exceed sixty (60) seconds duration; and
   2. Have not less than a one (1) minute rest period between rounds.
(7) Elimination event bouts shall not exceed three (3) rounds.
(8) No person over the age of thirty-nine (39) shall box or kick box without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled bout.

Section 12. A contestant shall report to, and be under the general supervision of, the inspector or employee of the authority in attendance at the show and shall be subject to any orders given by the inspector or employee of the authority.

Section 13. The inspector or an employee of the authority shall make all bouts in an elimination event.

Section 14. A contestant shall produce one (1) form of picture identification. A contestant shall not assume or use the name of another. A contestant shall change his ring name or be announced by any name other than that which appears on his license, except upon approval of the inspector or employee of the authority.

Section 15. No contestant shall compete against a member of the opposite sex.

Section 16. A contestant shall:
   (1) Be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors;
   (2) Wear closed toe and heel shoes during the contest;
   (3) Wear a groin protector;
   (4) Wear a kidney protector if available; and
   (5) Wear a mouthpiece.

Section 17. The following requirements apply to all bouts between female contestants:
   (1) A contestant shall not wear facial cosmetics during the bout;
   (2) A contestant with long hair shall secure her hair with soft and nonabrasive material;
   (3) A contestant shall provide the results of a pregnancy test indicating a negative finding that was taken within one (1) week prior to the bout.

Section 18. Scales used for any weigh-in shall be approved in advance by the authority.

Section 19. All promoters shall safeguard and provide a minimum of two (2) security guards for the premises where contests or exhibitions are conducted to ensure to the satisfaction of the authority that adequate protection against disorderly conduct has been provided. Any disorderly act, assault, or breach of decorum on the part of any licensee at the premises shall be prohibited.

Section 21. All emergency medical personnel and portable medical equipment shall be stationed at ringside during the event. Resuscitation equipment, oxygen, a stretcher, a certified ambulance, and an emergency medical technician shall be on site at all contests. If the ambulance or emergency medical technician is required to leave the event for any reason, no boxing will be allowed to continue until an ambulance is on site and the emergency medical technicians are once again at ringside.

Section 22. There shall be at least one (1) physician licensed by the authority at ringside before a bout shall be allowed to begin. The physician shall have at ringside any medical supplies reasonably anticipated to provide first aid medical assistance for the
type of injuries reasonably anticipated to occur in a boxing or kick-boxing contest.

Section 23. The promoter shall secure insurance for his contestants that provides medical coverage for any injuries sustained in the boxing event. The minimum amount of coverage per contestant shall be $5,000 health and $5,000 accidental death benefits. A certificate of insurance coverage must be provided to the authority no less than two (2) business days before the event.

Section 24. Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to elimination events by the authority. To each elimination event, the authority shall assign: (1) Three (3) judges; (2) One (1) timekeeper; (3) One (1) physician; and (4) One (1) referee if fifty (50) or fewer contestants participate in the elimination event, and two (2) referees if more than fifty (50) contestants participate in the elimination events.

Section 25. If at anytime during or between rounds a contestant begins to bleed in such a manner that blood may come into contact with the other contestant, the gloves of the other contestant, the ring, the officials, or the audience, the bout shall be terminated. The judges shall score the bout until the time the bout was halted and shall determine the winner. Either the referee or the ringside physician has the power to terminate the bout under this section.

Section 26. The authority may request at any time a contestant submit to a drug screen for illegal drugs at the contestant’s expense. If the drug screen indicates the presence of illegal drugs in the contestant, or if the contestant refuses to submit to the test, the authority may suspend or revoke the license of the contestant, or the authority may impose a fine upon the contestant, or both.

Section 27. No contestant shall compete against a member of the opposite sex.

Section 28. No person over the age of thirty-nine (39) shall box without first submitting to a comprehensive physical performed by a physician licensed by the authority. The results of the physical and a medical authorization or release shall then be completed and submitted to the authority no later than fifteen (15) business days prior to the scheduled bout.

Section 29. The promoter shall submit written notice to a local hospital with an on-call neurosurgeon that an elimination event is being held. This notice shall include the date, time and location of the event. A copy of this notice shall be filed with the authority no less than two (2) business days before the event.

Section 30. Incorporation by Reference. (1) "Application for an Elimination Event Contestant Permit", (2/06), is incorporated by reference.

(2) This form may be inspected, obtained, or copied, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director

APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on March 23, 2006, at 9 am, at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency In writing by March 16, 2006, 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 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 March 31, 2006. A written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-5969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation sets forth detailed rules governing the conduct of elimination events. Perhaps most importantly, the administrative regulation requires adequate medical equipment and personnel to be on-site at all times during these events.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that elimination events in the Commonwealth are conducted in a manner as to ensure the health and safety of all participants.
   (c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180 explicitly grants the Kentucky Boxing and Wrestling Authority the power to promulgate administrative regulations necessary for the performance of its regulatory functions. These functions include, as set forth in KRS 229.171, the responsibility to protect the athletes who participate in events under the Authority’s jurisdiction, as well as to provide the professional staff necessary to properly regulate those events.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth in detail the rules governing the conduct of participants at professional elimination events taking place in the Commonwealth.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation? 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
   (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed athletes who participate in elimination events and the officials who regulate those events will be impacted by this administrative regulation.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The licensed participants at elimination events will be subject to requirements concerning dress and protective gear, ring specifications, prefight physicals, the mandatory presence of medical equipment and personnel, and other matters designed to ensure these events are conducted in a safe and fair manner.

(5) Provide an estimate of how much it will cost to implement this regulation:
   (a) Initially: Minimal
   (b) On a continuing basis: Minimal
   (c) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees or funding will be required 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 requires contestants in elimination events to pay a fee of $5 dollars for participation in that event.

(9) TIERING: Tiering is applied to a limited extent, in that the officials who participate in elimination events (in particular judges, timekeepers, physicians, and referees) receive increased compensation for events involving more than 50 contestants.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(Repealer)


RELATES TO: KRS 229.180(1)
STATUTORY AUTHORITY: KRS 229.180(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. KRS 229.180(1) grants the Kentucky Boxing and Wrestling Authority the authority to adopt and promulgate, amend, and abrogate administrative regulations necessary to, or expedient for, the performance of its statutory regulatory functions. This administrative regulation repeals 201 KAR 27:010, 27:013, 27:014, 27:015, and 27:030, which are no longer required, because the requirements are duplicated and modified in 201 KAR 27:011, 27:012, 27:017, and 27:065. The administrative regulations were moved and separated for ease of administration and understanding by the regulated community.

Section 1. The following regulations are hereby repealed:
(1) 201 KAR 27:010. General requirements for boxing, elimination events, kick boxing, matches, shows, or exhibitions;
(2) 201 KAR 27:013. Scoring and conduct of boxing, kick boxing, and elimination events;
(3) 201 KAR 27:014. Female boxing guidelines;
(4) 201 KAR 27:015. Prompt payment of fees, fines and forfeitures required; and
(5) 201 KAR 27:030. Contestants in boxing, kick boxing, and elimination events

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:
   (b) The necessity of this administrative regulation: This administrative regulation repeals these regulations, since the requirements are now set forth in different regulations.
   (c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 13A.310 requires that an administrative regulation, once adopted, cannot be withdrawn, but shall be repealed if it is desired that it no longer be effective. These administrative regulations are no longer necessary; and therefore, the authority wishes to repeal them.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of these regulations will simply and clarify the regulatory scheme.
   (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: N/A
      (b) The necessity of the amendment to this administrative regulation: N/A
      (c) How the amendment conforms to the content of the authorizing statutes: N/A
      (d) How the amendment will assist in the effective administration of the statutes: N/A
   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All members of the regulated community will be affected in that they will benefit from a reorganized and streamlined set of administrative regulations.
   (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: As this administrative regulation merely repeals other administrative regulations in order to reorganize the subject matter in KAR Title 201, it will assist the regulated community in accessing pertinent regulatory provisions.
   (5) Provide an estimate of how much it will cost to implement this regulation:
      (a) Initially: N/A
      (b) On a continuing basis: N/A.
   (6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Boxing and Wrestling Authority is funded by the regulated community.
   (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 necessary funding is anticipated.
   (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased, directly or indirectly, by this administrative regulation.
   (9) TIERING: Is tiering applied? Tiering is not applicable to this administrative regulation, as it is merely a repealer.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(New Administrative Regulation)

201 KAR 27:065. Promoters.

RELATES TO: KRS 229.081, 229.091(1), 229.180(1)
STATUTORY AUTHORITY: KRS 229.081, 229.180(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.180(1) authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 authorizes the authority to require certain participants at
professional shows to obtain licenses before participating. KRS 229.081 allows the authority to specify by administrative regulation the participants to be licensed. KRS 229.091(1) provides that every licensee shall be subject to such administrative regulations as the authority prescribes. This administrative regulation sets forth the licensing requirements for promoters.

Section 1. The annual license for a promoter shall entitle the holder to conduct wrestling, boxing, kickboxing, elimination event, or mixed martial arts shows at any location within the Commonwealth for a period of one (1) year from the date of issuance. The fee for the annual license for a promoter shall be $300. The form, "Application for License as a Promoter", (206), shall be filled out by the promoter and submitted with proof of bond. A background check shall be done on all applicants by the authority or its designated representative. The application shall be reviewed by the authority for approval.

Section 2. Compensation shall not be paid to any contestant in advance unless by prior approval of the authority.

Section 3. Payment of license fees for all contestants, seconds, managers, and trainers shall be deducted from that contestant's purse, and the promoter shall issue a check or money order to the authority for the total amount of these license fees before the commencement of the main event.

Section 4. Approval for a show date shall not be granted until the authority receives the taxes due for all previous shows.

Section 5. If the inspector has reason to believe that the promoter has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may impose one (1) or more of the following penalties:

(1) Issuance of a cease and desist order to the promoter;
(2) Issuance of a notice of violation to the promoter;
(3) Ejection of the promoter from a show; or
(4) Assessment of a fine pursuant to KRS 229.991.

Section 6. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a promoter, the authority may impose one (1) or more of the following penalties:

(1) Suspension of the license of the promoter pursuant to KRS 229.200;
(2) Revocation of the license of the promoter pursuant to KRS 229.200;
(3) Reprimand of the promoter pursuant to KRS 229.200; or
(4) Assessment of a fine pursuant to KRS 229.991.

Section 7. Incorporation by Reference. (1) "Application for License as a Promoter", (206), is incorporated by reference.

(2) This form may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Authority office at 100 Airport Road, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director
APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 a.m., at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth licensing requirements for promoters. A fee of $300 is imposed for an annual license.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to regulate the activities of promoters to ensure the safety and integrity of professional matches in the Commonwealth.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.180 authorizes the authority to promulgate administrative regulations necessary to implement KRS Chapter 229. KRS 229.081 authorizes the authority to require certain participants at professional matches to obtain licenses before participating. KRS 229.091(1) provides that every licensee shall be subject to such administrative regulations as the authority prescribes.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in ensuring that promoters are subject to reasonable standards of conduct.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact promoters, primarily. There are approximately 30-40 active, licensed promoters in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The promoters will be subject to the licensing and fee process and will be subject to discipline by the Boxing and Wrestling Authority.

(5) Provide an estimate of how much it will cost to implement this regulation:
Initially: Minimal
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: It imposes a $300 annual license fee on promoters.

(8) TIERING: Is tiering applied? No tiering is applied; promoters, a fairly small group of licensees, are treated equally.
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ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Boxing and Wrestling Authority
(New Administrative Regulation)

201 KAR 27:090. Trainers.

RELATES TO: KRS 229.081(7), KRS 229.091(1), 229.190, 229.200, 229.991

STATUTORY AUTHORITY: KRS 229.081(7), 229.091(1), 229.190(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.190(1) grants the authority the power to promulgate, amend, or repeal administrative regulations necessary to perform its regulatory functions. KRS 229.081(7) provides for the licensing of trainers at a professional bout. KRS 229.091(1) provides that every licensee shall be subject to such administrative regulations as the authority prescribes. This administrative regulation sets forth standards governing the conduct of trainers.

Section 1. (1) A trainer shall report to, and be under, the general supervision of the inspector or employee of the authority in attendance at the show.

(2) A trainer shall obey all orders of the inspector or employee of the authority.

Section 2. A trainer shall be licensed by the authority, and shall be governed by KRS Chapter 229 and 201 KAR Chapter 27.

Section 3. Any violation by a trainer of KRS Chapter 229 or 201 KAR Chapter 27 may be sufficient cause for disqualification of the contestant, for whom the trainer acts, by the referee or judges.

Section 4. A trainer shall not act as a manager unless so licensed.

Section 5. A trainer shall be equipped with a first aid kit and the necessary supplies for proper attendance upon the contestant.

Section 6. A trainer shall leave the ring at the timekeeper’s ten (10) seconds whistle before the beginning of each round of a boxing, kickboxing, or mixed martial arts event or elimination event and shall remove all equipment. No equipment shall be placed on the ring floor until after the bell has sounded at the end of the round or period.

Section 7. A trainer shall not throw a towel or other article into the ring.

Section 8. A trainer shall wear surgical gloves at all times while carrying out the trainer’s duties.

Section 9. If the inspector has reason to believe that a trainer has committed a violation of KRS Chapter 229 or 201 KAR Chapter 27, the inspector may impose one (1) or more of the following penalties:

(1) Issuance of a cease and desist order to the trainer;
(2) Issuance of a notice of violation to the trainer;
(3) Ejection of the trainer from a show; or
(4) Assessment of a fine pursuant to KRS 229.991.

Section 10. Upon the finding of a violation of KRS Chapter 229 or 201 KAR Chapter 27 by a trainer, the authority may impose one (1) or more of the following penalties:

(1) Suspension of the license of the trainer pursuant to KRS 229.200;
(2) Revocation of the license of the trainer pursuant to KRS 229.200;
(3) Reprimand of the trainer pursuant to KRS 229.200; or
(4) Assessment of a fine pursuant to KRS 229.991.

JOHN W. CLAY, Deputy Secretary
CHRISTOPHER L. LILLY, Commissioner, Acting Executive Director

APPROVED BY AGENCY: February 6, 2006
FILED WITH LRC: February 14, 2006 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2006, at 9 am, at the Office of Housing, Building and Construction at 101 Sea Hero Road, Suite 100, Frankfort Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 2006, 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 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 March 31, 2006. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: CONTACT PERSON: Christopher L. Lilly, Kentucky Boxing and Wrestling Authority, Environmental and Public Protection Cabinet, 100 Airport Road, Suite 300, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-3969.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Chris Lilly
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the guidelines to be followed by trainers. It clarifies that managers are subject to the authority of inspectors and employees of the authority, and sets forth the penalties (fine, penalty, notice of violation, and revocation or suspension of license) to which managers are subject for violations of this administrative regulation.
(b) The necessity of this administrative regulation: This regulation is necessary to properly regulate the conduct of trainers at professional matches, shows, and events subject to the authority of the Kentucky Boxing and Wrestling Authority.
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 229.190X(1) authorizes the Kentucky Boxing and Wrestling Authority to adopt any and all regulations necessary to properly perform its function to regulate the conduct of professional matches, shows and events in the Commonwealth.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the rules governing the conduct of trainers at professional matches, shows and events subject to regulation pursuant to KRS Chapter 229.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All trainers who participate in professional matches in the Commonwealth will be governed by this administrative regulation.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The authority and penalties (fine, penalty, notice of violation, and revocation or suspension of license) to which trainers are subject will be clarified by this amendment to this administrative regulation.
(5) Provide an estimate of how much it will cost to implement this regulation:
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(a) Initially: Minimal, since the basic mechanisms for governing the conduct of participants at professional matches, shows and events is already in place.

(b) On a continuing basis: Minimal

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The Kentucky Boxing and Wrestling Authority is funded by the regulated community.

(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 necessary funding is anticipated.

(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 or increase any fees.

(9) TIERING: Is tiering applied? This administrative regulation does not employ tiering, since all managers are governed in an identical manner by the guidelines set forth in this administrative regulation. There is no reason to discriminate among trainers as a class.

COMMERCE CABINET
Kentucky Department of Parks
(New Administrative Regulation)


RELATES TO: KRS 148.021
STATUTORY AUTHORITY: KRS 148.021(1), (4), (8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.021(1) authorizes the Commissioner of Parks to exercise the administrative functions pertaining to the operation of state parks. KRS 148.021(4) authorizes the department to fix fees and charges for the use of state parks. KRS 148.021(8) authorizes the department promulgate regulations to carry out the provisions of KRS 148.021, including establishing and fixing fees. This administrative regulation establishes the procedures for the collection of boat launch fees for the use of boat ramps located at Kentucky state parks.

Section 1: Definitions. (1) "Boat ramp" means an area, usually a paved sloping area into a body of water, that allows a boat to be launched.

(2) "Iron ranger" means an upright iron device that is secured into an area in close proximity to a boat ramp that allows a patron to securely deposit a boat launch fee.

Section 2. A Kentucky state park maintaining a lake in excess of 800 acres and having adequate paved parking, shall be required to collect a boat ramp fee if the department provides security, patrols on a regular basis, provides sufficient lighting for boating activities, and provides restroom facilities.

Section 3. A fee shall not be charged at a boat ramp on a lake less than 800 acres.

Section 4. A boat ramp launch fee shall not be charged at a boat ramp located within a campground in a Kentucky state park.

Section 5. A boat ramp fee may be paid in two ways:

(1) Patron may enclose three (3) dollars in an envelope and deposit the envelope into an iron ranger at the boat ramp with no restrictions on method of payment; or

(2) Purchase an annual pass, as described in paragraph (a) below, that shall be placed on the rear left bumper of the owner’s boat trailer.

(a) User may purchase an annual boat ramp pass at the front desk of a Kentucky state park or at the business office of a Kentucky state park by check, debit or credit card, cash, certified proceeds, or money order.

(b) The charge for an annual pass is thirty (30) dollars for Kentucky residents and fifty (50) dollars for nonresidents.

(c) The purchase of an annual boat ramp pass entitles a Kentucky resident to purchase a second annual boat ramp pass for a discounted price of fifteen (15) dollars.

(d) The purchase of an annual boat ramp pass entitles nonresidents to purchase a second annual boat ramp pass for a discounted price of twenty-five (25) dollars.

Section 6. (1) The following material is incorporated by reference:

(a) The boat launch fee payment envelope and receipt stub (prenumbered, self deposit launch permit) (January 2005);

(b) Pink notice document styled ATTENTION (January 2005);

(c) Yellow notice document styled ATTENTION (January 2005);

(d) Duplicate copy notice document styled KENTUCKY DEPARTMENT OF PARKS (January 2005); and

(e) "ANNUAL RAMP PASS", (January 2005).

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Department of Parks, Capital Plaza Tower, 10th floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 A.M. to 4:30 P.M.

GEORGE WARD, Secretary
JOHN KINGTON, Acting Commissioner

APPROVED BY AGENCY: February 13, 2006
FILED WITH LRC: February 15, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, March 6, 2006 at 10 a.m., at the Department of Parks in the 10th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing not later than five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by March 31, 2006. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Henry J. Curtis, Attorney, Department of Parks, Capital Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4270, ext. 225, fax (502) 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Henry J. Curtis

(1) Provide a brief narrative summary of: This administrative regulation establishes guidelines and procedures and a fee schedule for public use of Kentucky State Park boat ramps for access to Kentucky lakes at state park facilities. Fees shall be charged at lakes over 800 acres where security is provided and are patrolled on a regular basis, have high impact maintenance requirements, have adequate parking for motor vehicles and trailers, provide restroom facilities, and have sufficient lighting for continuous use of state park boat ramps without cessation.

(a) What the administrative regulation does: This administrative regulation facilitates the payment of maintenance costs for high demand boat ramps owned and operated by the Kentucky Department of Parks. There is a significant need for improvements and annual maintenance of the Department of Parks’ boat ramp infrastructure, because it supports and sustains recreational fishing, bass tournaments, and boating activities, with high user traffic and high maintenance cost.

(b) The necessity of the administrative regulation: To recoup some of the costs associated with maintenance, improvement, and administration of Kentucky state park facilities.

(c) How the administrative regulation conforms to the content of the authorizing statutes: KRS 148.021(8) authorizes the Department of Parks to promulgate administrative regulations governing the use, maintenance, improvement, and administration of
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state park facilities, infrastructure, and equipment.

(d) How will this administrative regulation assist in the effective administration of the statutes: KRS 143.021(6) authorizes the Department of Parks to promulgate administrative regulations to facilitate the administration of state park functions relating to modernization, maintenance, and improvement of state park facilities and recoupment of state park infrastructure maintenance costs. This administrative regulation establishes a fee schedule based upon objective criteria that are demand driven and grounded in business necessity. This administrative regulation supplements the statute by providing certainty and clear administrative direction for users of Kentucky state park boat ramp facilities.

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

(a) How the amendment will change this existing administrative regulation: 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 that will be affected: Boating enthusiasts in the Commonwealth will be adversely affected in the short run, but the long-term economic effects on boating enthusiasts will be positively shaped by the improvements in the state park boat ramp infrastructure. There are 172,000 registered boat owners in Kentucky. There are approximately 100 private marinas and 16 state-owned marinas in the Commonwealth of Kentucky. The long-term economic prognosis is for increased revenues for businesses and local governments as a consequence of this regulation.

(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The boaters in the Commonwealth of Kentucky will be affected minimally. Nonresident boaters will increase in direct proportion to improvements in the boat ramp infrastructure and upgrades in state park amenities.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: There have been 29 iron rangers purchased at a cost of $23,769 at an average cost of $820 per iron ranger. Township staff have installed the iron rangers at a cost of $3000 (24 iron rangers have been installed). The average installation cost was $150 per iron ranger.

(a) Initially: There will be an additional $750 installation cost to the agency to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The current budget of the Department of Parks will absorb the cost of implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. It will not be necessary for the General Assembly to increase its appropriations and funding of the Department of Parks in order to implement this administrative regulation. The department generated $226,000 during the first 6 months of operation of the boat ramp program without issuing any citations and fines for noncompliance. Over $351,000 was collected by the Department of Parks in boat ramp fees by year end 2005.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: Yes. See Section 5 of the regulation.

(9) TIERING: Is tiering applied? Tiering was used, because state residents pay a disproportionate share of the cost to operate Kentucky State Parks, which are supported by revenue appropriated by the Kentucky General Assembly from state income taxes and other mandatory state charges and fees that are imposed upon state residents. The Commonwealth has a legitimate interest in revitalization of its aging and high-maintenance boat ramp infrastructure in the face of high demand. There is a significant demand for boat ramp access in the most popular Kentucky state parks, which is partly generated by resident and non-resident boating enthusiasts who take advantage of the lack of access fees and use fees in the Kentucky State Parks. Federal parks, other state parks, and some boat ramp facilities already charge user fees. Such practices cause nonresident boaters to travel to Kentucky state park boat ramps, which were being provided to the public free of charge. Finally, the proposed fee schedule is noncoercive in nature.

JUSTICE AND PUBLIC SAFETY
Department of State Police
Forensic Laboratory System
(New Administrative Regulation)


RELATES TO: KRS 17.170, 17.171, 17.172, 17.173, 17.174, 17.175

STATUTORY AUTHORITY: KRS 15A.160, 17.170, 17.175, 17.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.175 directs the Kentucky State Police to promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system, to include provisions for collection of DNA samples from designated persons for inclusion in the database, as well as procedures concerning database system usage and integrity. This administrative regulation establishes collection procedures for DNA samples for inclusion in the DNA database, quality assurance and testing proficiency standards for DNA samples included in the DNA database, as well as procedures governing DNA database system usage, security, and integrity issues.

Section 1. Definitions. (1) "Biological sample" means any part of the human body from which a person's DNA profile may be extracted. This may include, but is not limited to, blood, hair, saliva, tissue, or bone.

(2) "Blood sample" means blood drawn from a person by means of hypodermic needle extraction or by a finger prick lancet for purposes of obtaining a DNA profile.

(3) "DJJ" means the Department of Juvenile Justice.

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA database" means the database maintained by the Kentucky State Police which contains the DNA profiles for qualifying offenders, crime scene specimens, missing persons, and close relatives of missing persons as authorized by KRS 17.175.

(6) "DNA profile" means a set of DNA identification characteristics which permit the DNA of one (1) person to be distinguishable from that of another person.

(7) "DNA sample" means a biological sample collected for DNA identification purposes.

(8) "DOC" means the Department of Corrections.

(9) "Evidentiary Item" means any physical evidence recovered from a crime scene that may contain biological material from which a DNA profile may be extracted.

(10) "FBI" means the Federal Bureau of Investigation.

(11) "KSP" means the Kentucky State Police.

(12) "KSP Central Lab" means the Kentucky State Police Central Forensic Laboratory.

(13) "Offender DNA collection kit" means a package of materials obtained from the KSP Central Lab for the purpose of collecting a blood sample from a qualifying offender by either hypodermic needle extraction or finger prick lancet for the purpose of obtaining a DNA profile.

(14) "Qualifying offender" means a person who has committed one (1) or more of the criminal or public offenses enumerated in KRS 17.170 - 17.174.

Section 2. Collection of DNA Samples From Qualifying Offenders For Inclusion In DNA Database. (1) DNA samples shall be collected by DOC and DJJ from qualifying offenders in a medically-
approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist.

(2) KSP Central Lab shall provide offender DNA collection kits to DOC and DJJ for the collection of DNA samples. Each offender DNA collection kit shall either contain a vacutainer tube containing EDTA preservative for obtaining a drawn blood sample by hypodermic needle extraction, or the collection materials necessary to obtain a blood sample by a finger stick lancet procedure. Each offender DNA collection kit shall be secured in protective wrapping materials in a preaddressed, sealable mailing container.

(3) Each offender DNA collection kit for the collection of a blood tube sample shall contain an "Offender DNA Collection Kit Information Sheet (blood tube method)," KSP Form No. 47 (Revised 5/03). Each offender DNA collection kit for the collection of a finger prick lancet blood sample shall contain an "Offender DNA Collection Kit Information Sheet (finger prick lancet method)," KSP Form No. 47-A (First Edition 01/06). The Offender DNA Collection Kit Information Sheet shall contain step-by-step instructions for the collection of the blood sample on one (1) side of the form. The other side of the Offender DNA Collection Kit Information Sheet shall be completed with biographical and offense-related information concerning the offender, and shall have space for the qualifying offender's left and right thumbprints. The Offender DNA Collection Kit Information Sheet shall be completed by the person collecting the blood sample from the qualifying offender when the sample is collected and in the presence of the qualifying offender.

(4) Immediately following collection of a blood sample from a qualifying offender, the offender DNA collection kit shall be sealed. As a safeguard, each offender DNA collection kit shall be forwarded to the KSP Central Lab either by personal courier, private courier, registered mail, certified mail, or first class mail.

Section 3. Collection of Missing Person DNA Samples for Inclusion in DNA Database. (1) Any available biological material from the missing person from whom a DNA sample can be extracted shall be submitted by a law enforcement agency to the KSP Central Lab accompanied by a completed KSP "Request For Examination," KSP Form No. 26 (Revised 3/01).

(2) If practical, DNA samples shall be submitted to the KSP Central Lab from the biological parents and siblings of the missing person. If practical, a blood sample from children of the missing person and the children's other parent may also be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 4. Collection of DNA Samples from Unidentified Bodies for Inclusion in DNA Database. (1) A biological sample from the unidentified body shall be submitted by a law enforcement agency to the laboratory accompanied by a completed KSP Form No. 26.

(2) If practical, the biological sample may be a blood sample, a deep muscle tissue sample, or a long bone. The requesting officer shall contact the KSP Central Lab to determine if a different type of biological sample from the unidentified body is acceptable. If one (1) of the above-mentioned samples cannot be submitted.

(3) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.

Section 5. Collection Of DNA Samples From Crime Scenes For Inclusion in DNA Database. (1) Any evidentiary item recovered from a crime scene from which a DNA sample can be extracted may be submitted by a law enforcement agency to KSP Central Lab for analysis. All evidentiary items so submitted shall be accompanied by a completed KSP Form No. 26.

(2) Biological samples shall be placed in protective packaging. All samples shall be sealed with evidence tape and initialed by the submitting officer. Samples shall be forwarded to the KSP Central Lab in a manner by which an evidentiary chain of custody can be established.


Section 7. DNA Database Usage, Access and Security. (1) Information contained in the DNA database shall be used for law enforcement and statistical purposes only in accordance with KRS 17.175.

(2) DNA database security, employee access, and limitations on DNA database usage shall be governed by the KSP Forensic Laboratories' "DNA Database Manual" (Revised January 9, 2006).

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Offender DNA Collection Kit Information Sheet (blood tube method)," KSP Form No. 47 (Revised 5/03);
(b) "Offender DNA Collection Kit Information Sheet (finger prick lancet method)," KSP Form No. 47-A (First Edition 1/06);
(c) "KSP Request For Examination," KSP Form No. 26 (Revised 3/01);
(d) KSP Forensic Laboratories' "The Forensic Biology/DNA Database Quality Assurance Manual," (Revised January 13, 2006);
(e) KSP Forensic Laboratories' Operations Manual, Section 9-9 "Proficiency Testing Program," (Revised July 1, 2003);
(f) KSP Forensic Laboratories' Operations Manual, Section 9-12 "Proficiency testing-Confidentiality," (Revised July 1, 2003);
and
(g) KSP Forensic Laboratories' "DNA Database Manual" (Revised January 9, 2006).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the KSP Central Forensic Laboratory, 100 Sower Boulevard, Suite 102, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

STEPHEN R. PENCE, Lt. Governor, Secretary
MARK MILLER, Commissioner
APPROVED BY AGENCY: January 13, 2006
FILED WITH LRC: January 23, 2006 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this proposed administrative regulation shall be held on Thursday, March 23, 2006, at 10 a.m. (EST), at Kentucky State Police Headquarters, Room 105, 919 Versailles Road, Frankfort, Kentucky 40601. 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 you have a disability for which the Kentucky State Police needs to provide accommodations, please notify us of your requirement five workdays prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by 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 March 31, 2006. 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. Roger Wright, Assistant General Counsel, Justice And Public Safety Cabinet, Office of Legal Services, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 695-6345, fax (502) 573-1636.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Roger G. Wright

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the collection procedures to be used by the Department of Corrections and the Department of Juvenile Justice for blood samples from certain convicted adult and juvenile offenders as well as adjudicated juvenile public offenders whose DNA profiles are required by KRS 17.170 - 17.174 to be included in the Department of State Police's DNA database. This regulation also establishes procedures for the collection and submission of biological samples from missing persons, close relatives of missing persons, unidentified persons, and crime scenes for inclusion in the DNA database. This regulation further establishes quality assurance and DNA analyst proficiency standards for DNA profiles included in the DNA database. Finally, this regulation establishes DNA database access restrictions and security protocol.

(b) The necessity of this administrative regulation: KRS 17.170 requires the Department of State Police to promulgate administrative regulations concerning the collection of blood samples from offenders whose DNA samples are to be included in the department's DNA database. KRS 17.175 requires the department to promulgate administrative regulations for the collection of DNA samples from qualifying offenders, missing persons, close relatives of missing persons, unidentified persons, and evidence recovered from crime scenes for inclusion in the department's DNA database. KRS 17.175 requires the department to establish administrative regulations concerning the usage and security of the department's DNA database.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes blood sample collection procedures for qualifying offenders for inclusion of offenders’ DNA profiles in the department's DNA database. This regulation also establishes procedures for inclusion of samples from unidentified persons, missing persons, close relatives of missing persons, and crime scene evidence for inclusion of these DNA profiles in the department's DNA database. Finally, this regulation addresses system usage and access issues as directed by KRS 17.175.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes blood sample collection procedures for qualifying offenders, for inclusion of their DNA profiles in the department's DNA database. This regulation also establishes protocol for submission of biological samples from unidentified persons, missing persons, close relatives of missing persons, and crime scene evidence for inclusion of these DNA profiles in the department's DNA database. Finally, this regulation addresses system usage and access issues as directed by KRS 17.175.

(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 regulation affects convicted adult and juvenile offenders and juvenile public offenders who are required by statute to submit biological samples for inclusion of their DNA profiles in the department's DNA database. This regulation impacts the Department of Corrections and the Department of Juvenile Justice as these agencies are tasked with collection of qualifying offender samples for DNA identification purposes. Finally, this administrative regulation impacts other Kentucky law enforcement agencies that submit biological samples for DNA Identification purposes from missing persons, close relatives of missing persons, unidentified persons, and crime scene evidence for inclusion in the department's DNA database.

(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: Qualifying offenders are required to submit to collection of a blood sample for DNA identification purposes. The Department of Corrections and Department of Juvenile Justice will be required to have appropriate medical staff available to complete the required collection. Other law enforcement agencies will have to comply with the department's submission procedures for other enumerated categories of DNA profiles that are included in the department's DNA database.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: Initially. The cost of testing a sample to develop a DNA profile for inclusion in the department's DNA database is approximately $28 per sample. Based upon past year qualifying offender submissions for inclusion in the DNA database, the department estimates that an average of 1,200 qualifying offender samples will be submitted annually for testing and inclusion in the DNA database. To date, the department has been able to receive federal grant funding from the National Institute of Justice to cover qualifying offender sample testing. Testing related to missing persons, unidentified bodies, and crime scenes are covered by the department's existing budget.

(b) On a continuing basis. Same as initial costs. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Same as initial costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Discussed in initial cost assessment above.

(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: Not present.

(8) State whether or not this administrative regulation establishes any fees or direct costs, other than those related to testing of samples: N/A

(9) TIERING: Tiering is only applicable to this regulation in the sense that collection and submission procedures for biological samples from qualifying offenders is not the same as for missing persons, unidentified bodies, and crime scene evidence. It is not always possible to obtain a pristine blood sample in missing person, unidentified person, and crime scene evidence submission cases for DNA database inclusion as it is with qualifying offenders. Further, while this regulation establishes satisfactory chain of custody protocol for qualifying offender samples (i.e., completion of all offender identifying information in the presence of person collecting blood sample, sealing blood sample immediately on collection with tamper proof tape, and forwarding as soon as practical to the KSP Central Lab), the department does not deem it necessary to apply strict evidentiary chain of custody protocol requirements for collecting offender sample submissions with missing persons, unidentified bodies, and crime scene evidence samples. The department's rationale for this distinction is that any match of a qualifying offender's DNA profile to an unsolved crime profile in the department's or the national DNA database can be confirmed by retesting the offender's blood sample against the original crime scene evidence in a particular case. Further, strict evidentiary protocol dictates that a new sample of the offender's blood would be obtained by consent or search as necessary to confirm a match. In this regard, the department does not consider qualifying offender samples evidentiary in the strict chain of custody sense as is the case with other DNA profile submissions placed in the DNA database which would more likely be used as evidence in court proceedings.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 49 U.S.C. 14132 provides that the FBI will only accept DNA identification records and DNA analyses for inclusion in the FBI's national DNA database from a criminal justice agency which maintains a quality assurance program that meets or exceeds the...
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standards issued by the direction of the FBI.
3. Minimum or uniform standards contained in the federal mandate. See above.
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. N/A

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(New Administrative Regulation)

810 KAR 1:080. International wagering hubs.


STATUTORY AUTHORITY: KRS 230.779(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.779(6) authorizes the Kentucky Horse Racing Authority to promulgate the administrative regulations to effectuate the provisions of KRS 230.775 to 230.785 relating to international wagering hubs. The function of this administrative regulation is to establish the licensing procedures and requirements for operating an international wagering hub.

Section 1. Definitions. (1) "Account holder" means a person who uses a subscriber-based service in order to be able to place a pari-mutuel wager on a horse.
(2) "Account wager" means a wager made through a hub.
(3) "Source market" means the population living near a licensed racing association.
(4) "Take out rate" means the total amount of money withheld from a pari-mutuel pool pursuant to KRS 230.3615.
(5) "Track" is defined by KRS 230.210(10).
(6) "Wagering pool" means the amount of money bet on a race divided among the holders of winning tickets after the deduction of authorized taxes and fees.

Section 2. Application Requirements. (1) Persons or entities desiring to operate a hub in the Commonwealth shall apply to the Authority for a license.
(2) The application shall be made in writing and filed at the Authority office on or before September 1 of the year preceding the calendar year in which the license is to be in force, with the exception that an application for a hub license to operate during 2006 may be filed during 2006.
(3) An application shall not be acted upon by the Authority until the Authority is satisfied a full disclosure by the applicant of all relevant information has been made.
(4) An application for a hub license shall include:
(a) The applicant's legal name;
(b) The location of the applicant's principal office;
(c) The names, addresses, and dates of birth of all shareholders, directors, officers, and other persons owning or controlling a beneficial interest in the hub with the degree of ownership or type of interest shown; Corporations, partnerships, or other legal entities which own or control a beneficial interest in the applicant, either directly or through other corporations or legal entities, shall similarly file with the application a list showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities, with the degree of ownership or type of interest pertaining to the ownership or interest;
(d) If the applicant is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in paragraph (c) of this sub-
section shall be required from the directors of the membership organization, or the directors and officers of the publicly traded corporation, in lieu of the shareholders;
(e) A copy of the organizational documents of the applicant;
(f) The names of the racetracks the applicant, or its agent, has contracts with that allow the applicant to provide a simulcast signal and pari-mutuel wagering to the hub;
(g) Financial information from the applicant that demonstrates whether the applicant has the financial resources to install and operate a hub. If the applicant has audited financial statements the statements for the last three (3) years shall be provided to the Authority;
(h) A detailed budget showing on a monthly basis anticipated revenue, expenditures and cash flows, from the hub's operation during the license period;
(i) The number of days that the applicant is planning to operate the hub during the calendar year in which it is seeking to be licensed;
(j) A copy of the proposed surety bond or letter of credit identifying the insurance company and limits of liability as required by Section 5 of this administrative regulation;
(k) A detailed plan of operations in a format and containing information as required by the Authority. The plan of operations shall provide the following information:
(1) A description of the manner in which the proposed simulcasting and wagering system shall operate;
(2) A statement that the requirements for a qualified subscriber-based service or closed-loop system as defined in KRS 230.775(2) have been met;
(3) A description of the program or information to be provided to account holders to promote responsible wagering;
(4) A description of the effect of account wagering on the source market in which the account holder resides;
(5) A list of the states from which accounts may be established and operated. Evidence that the pari-mutuel wagering is permitted pursuant to the laws of each jurisdiction from which the applicant intends to accept accounts, and
(6) The applicant shall be part of the operational plan, or update to the plan, set the total take-out rate, subject to the approval of the Authority, for those wagering pools which are not merged with the wagering pools of the race track where the race is being run live; and
(l) Other information requested by the Authority as deemed appropriate by the Authority in reviewing the application.
(5) As a condition of granting a license, the Authority may require:
(a) A change in a proposed plan of operations; or
(b) A commitment or undertaking;
(c) The Authority may conduct investigations or inspections or request additional information from the applicant, as it deems appropriate, in determining whether to approve the license application.

Section 3. Application Approval. (1) In determining if an applicant is eligible to receive a license to operate a hub, the Authority shall consider all relevant factors, including the following:
(a) The financial strength of the applicant;
(b) The experience of the applicant;
(c) The effect of account wagering of the hub on the source market of a track or simulcast facility; and
(d) Whether the hub would be in the best interest of the public health, safety, and welfare of the immediate community and the Commonwealth.

Section 4. Fees. Fees shall be established by the Authority in accordance with KRS 230.779(2) and 230.779(7).

Section 5. Bond or Irrevocable Letter of Credit. (1) A hub licensed by the Authority shall submit to the Authority, at least thirty (30) days before it begins operations, a surety bond or irrevocable letter of credit in the amount required by the Authority, but not less than $500,000. In fixing the amount of security, the Authority shall consider all relevant factors, including liability associated with operations of the hub.
(2) The bond or letter of credit shall, if necessary, be used to:
(a) Comply with and perform the provisions and undertakings of the applicant set forth in the application as finally approved by the Authority;
(b) Discharge the applicant's financial obligations to account holders;
(c) Discharge payment of all taxes due by the applicant to the Commonwealth; and
(d) Discharge the applicant's financial obligations to any other parties as indicated in the application.

Section 6. Disputes. (1) Any dispute arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director within thirty (30) days of action or inaction leading to the dispute.
(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.
(3) An account holder who claims that nonpayment has occurred, may make a claim of nonpayment to the Authority. The Authority shall investigate the claim and provide the hub with an opportunity to respond thereto and submit any supporting documents or evidence it needs to defend the claim. If the Authority determines that the account holder is entitled to restitution, the hub shall have ten (10) days to pay the amount determined by the Authority to the account holder. If the hub fails to make restitution within this time, the Authority may take appropriate action against the bond.

Section 7. No Surcharge. No surcharge shall be charged on any wager processed through the hub.

Section 8. Number of Hubs. A telephone wagering system, as defined in KRS 230.873, shall not be considered a hub for purposes of determining the number of hubs in the Commonwealth.

Section 9. Changes. (1) After approval has been granted based on information given to the Authority, a hub shall not change its operations unless ordered to do so by the Authority, or unless prior approval is obtained from the Authority. A request for changes in a proposed plan of operation shall be submitted in writing to the Authority.
(2) A license issued under this administrative regulation is neither transferable nor assignable, including by operation of law, without the prior written consent of the Authority. The Authority may request information from the proposed new license holder to assist in determining whether to grant consent.

Section 10. Quarterly Filings. A hub shall file with the Authority, on or before thirty (30) days after the end of each calendar quarter, a report in the form required and provide all information required by the Authority.

Section 11. Revocation or Modification of License. (1) If the Authority receives information furnishing reasonable grounds to believe that the hub is not meeting or may not be able to timely meet, all of its obligations under KRS Chapter 230 or this administrative regulation, a show cause order shall be issued to the hub detailing the purported deficiency and setting a time and place for a hearing.
(2) The Authority may revoke the license of the hub upon a finding that any of the following conditions exist:
(a) The hub is operating:
   1. In contravention of its submitted application;
   2. In material violation of this administrative regulation; or
   3. In material violation of KRS Chapter 230;
(b) The hub no longer has the financial ability to assure its ability to meet its obligations;
(c) The hub has failed or refused to provide access to the books and records relating to the hub's activities of the entity.
(d) The hub license may be revoked by the Authority 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.

Hearing shall be conducted pursuant to KRS Chapter 13B. During the pendency of a hearing or appeal, the Authority may utilize the bond or letter of credit provided by the hub to make payments which are due and are not being paid by the hub.

LAURANA S. WILCHER, Secretary
WILLIAM STREET, Chairman
APPROVED BY AGENCY: January 26, 2006
FILED WITH LRC: January 27, 2006 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 22, 2006 at 9 a.m. at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing at least 5 workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard shall be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing shall 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 March 31, 2006. Send written comments of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jim Gallagher, Executive Director, Kentucky Horse Racing Authority, Kentucky Horse Park, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (502) 564-2040, fax (502) 564-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Underwood
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the licensing procedures and requirements for operating an international wagering hub.
(b) The necessity of this administrative regulation: KRS 230.775, 230.777, 230.779, 230.781, and 230.785 authorize international wagering hubs to be established in Kentucky and provide some guidance on establishment and operation of hubs. KRS 230.779(6) requires the Kentucky Horse Racing Authority to promulgate regulations to effectuate the provisions of KRS 230.775 to 230.785. This administrative regulation is necessary to comply with the requirements of KRS 230.779(6).
(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 230.779(6) specifically and directly authorizes the promulgation of this administrative regulation.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the licensing procedures and requirements for operating an international wagering hub.
(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: The groups that will be affected by this administrative regulation will be the racetracks, the betting public, the respective horsemen's organizations, the Jockeys Guild, and the Commonwealth of Kentucky.
(4) Provide an assessment of how the above groups or organizations will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: It is an-
anticipated that, as a result of this new regulation, businesses interested in creating HUBS in Kentucky will create a business model that will encourage economic growth for the racetracks, horsemen, the betting public, jockeys, and the Commonwealth of Kentucky.

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

(a) Initially: It is anticipated that the initial costs will be those involved in reviewing the applications for HUB licensees. It is estimated that those costs will be less than $100,000. As provided in KRS 230.779(2), the application shall be accompanied by an application fee to cover incremental costs to the Kentucky Horse Racing Authority in an amount the Authority determines to be appropriate.

(b) On a continuing basis. The Kentucky Horse Racing Authority will review license applications on an annual basis. In addition, the Authority may conduct investigations as it determines to be necessary in determining whether to approve the license application.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Pursuant to KRS 230.779(2) and (7), the Authority may establish fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. The fees are authorized in KRS 230.779(2) and (7). No additional 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 fees are authorized in KRS 230.779(2) and (7).

(9) TIERING: Is tiering applied? No, tiering is not applied in this regulation. There is not a disproportionate impact on different classes of regulated entities or individuals.
The February meeting of the Administrative Regulation Review Subcommittee was held on Monday, February 13, 2006, at 2:00 p.m., in Room 131 of the Capitol Annex. Senator Richard "Dick" Roeding called the meeting to order, and the roll call was taken. The minutes of the January 9, 2006 meeting were approved.

Present were:

Members: Senator Richard "Dick" Roeding, Co-Chair; Representative Tanya Pullin, Co-Chair; Senators Joey Pendleton, Alice Kerr, and Gary Tapp; and Representative Jimmie Lee.

LEC Staff: Dave Nicholas, Emily Caudill, Donna Little, Laura Milam, Karen Howard, Sarah Amburgey, Emily Harkenrider, Roslyn Hendrickson, and Elliot Steelberg.

Guests: Diana Barber, Tim Phelps, Kentucky Higher Education Assistance Authority; Kim Townley, Department of Education; David T. Buckingham, Cynthia Finnesses, University of Kentucky Agricultural Experiment Station Regulatory Services; Kathryn Dunnigan, Sarah Ball Johnson, State Board of Elections; Charlotte F. Beason, Nathan Goldman, Jimmy T. Isenberg, Board of Nursing; Sean Alten, Lona Brewer, John Lyons, Executive Director for Air Quality; Larry Brown, Veto the V.E.T.; Amy Barker, Todd Woodward, Department of Corrections; Kevin Noland, Board of Education; Tamela A. Biggs, Renee Redding, Education Cabinet; Carrie Banahan, Treva W. Donnell, R. Glenn Jennings, Office of Insurance; Lisa Underwood, Dr. Andrew Roberts, Kentucky Horse Racing Authority; Frank Becker, Dr. Thomas Tobin; Kentucky Horsemen's Benevolent and Protective Association; Robert Stalling, Valmannana; Chris Lilly, Ron Moms, Tony S. Royalty, Chartable Gaming; Trish Howard, Jason Moseley, Robert Nelson, Stuart Owen, Steve Salt, Cabinet for Health and Family Services, and Sherry Currens, Kentucky Domestic Violence Association.

The Administrative Regulation Review Subcommittee met on Monday, February 13, 2006, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY: Division of Student Services: KHEAA Grant Programs
11 KAR 5:130. Student application. Diana Barber, Assistant General Counsel, Tim Phelps, Student Aid Branch Manager, and Kim Townley represented the authority.

A motion was made and seconded to approve the following amendment: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations. Without objection, and with agreement of the agency, the amendment was approved.

Early Childhood Development Scholarship Program
11 KAR 16:001. Definitions for 11 KAR Chapter 16. A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

11 KAR 16:010. Early Childhood Development Scholarship Program applicant selection process. A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to clearly establish the appeals rights for scholarship applicants; (2) to amend Section 2 to clarify the application procedure; and (3) to amend Sections 1, 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

UNIVERSITY OF KENTUCKY: Agriculture Experiment Station: Division of Regulatory Services: Seed
12 KAR 1:116. Sampling, analyzing, testing, and tolerances. David Buckingham, Seed Program Regulatory Coordinator, represented the station.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to define "Kentucky Seed Law"; and (2) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 to 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.

STATE BOARD OF ELECTIONS: Forms and Procedures
31 KAR 4:030. Reporting forms. Katie Dunnigan, General Counsel, and Sarah Johnson, Executive Director, represented the board.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

31 KAR 4:070. Recanvass procedures. A motion was made and seconded to approve the following amendment: to amend Section 5 to change the edition date of the form incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

31 KAR 4:150 & E. Elections emergency contingency plan. A motion was made and seconded to approve the following amendment: 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 amendment was approved.

31 KAR 6:020. Provisional Voting. A motion was made and seconded to approve the following amendments: (1) to amend Section 6 to add a provision stating when the form SBE 54C was required; 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.

GENERAL GOVERNMENT CABINET: Board of Nursing: Board
201 KAR 20:240. Fees and applications and for services. Nathan Goldman, General Counsel, Charlotte Beason, Executive Director, and Jimmy Isenberg, President, represented the board.

A motion was made and seconded to approve the following amendment: to delete the proposed fee increases for licensure by examination for registered nurses and licensed practical nurses and reinstate the current fees of $110. Without objection, and with agreement of the agency, the amendment was approved.

201 KAR 20:280. Standards for prelicensure registered nurse and practical nurse programs.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department for Environmental Protection: Division for Air Quality: Mobile Source-related Emissions
401 KAR 65:011E. Emergency repealer. John Lyons, Director, represented the division.

Co-Chair Roeding stated that he appreciated the cabinet's work on this repealer administrative regulation because it effectively ended the tailpipe testing program in Northern Kentucky.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary
501 KAR 6.270. Probation and parole policies and procedures. Amy Barker, Assistant General Counsel, and Todd Woodward, Operations Manager, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 and the material incorporated by reference for clarification and to comply with the drafting and format requirements of KRS Chapter 13A; (2) to delete two policies because they were unnecessary under KRS 13A.010(2); and (3) to update the process for restoration of civil rights in CFP 27-26-01 to reflect the current practice of requiring three character references and a written statement in addition to the application and
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processing fee. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6.099. Corrections secured policies and procedures. This administrative regulation was reviewed and amended, with agreement of the agency, by the Subcommittee in closed session pursuant to KRS 61.810(1)(k), KRS 61.815(2), and KRS 197.029(6).

EDUCATION CABINET: Board of Education: Department of Education: Office of Instruction

704 KAR 3:480. Reading diagnostic and intervention grants. Kevin Noland represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend the REFERENCES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; and (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Workforce Investment: Office of Career and Technical Education: Personnell System for Certified and Equivalent Employees


A motion was made and seconded to approve the following amendments: (1) to amend the REFERENCES TO 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 Sections 1 and 3 to reference the Minimum Salary Schedule; (4) to amend Section 2 to delete open, discretionary language regarding salary increases after one year probationary periods; (5) to create a new Section 5 to incorporate by reference the Minimum Salary Schedule; and (6) to amend Sections 1, 2, 3, and 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Office of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:070. Examinations. Carrie Raneshen, Deputy Executive Director, Trava Donnell, and Glenn Jennings, Executive Director, represented the office.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to specify what constituted good cause to grant an extension; 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.

806 KAR 9:220. Continuing education. A motion was made and seconded to approve the following amendments: (1) to amend Section 2(2) to specify standards for granting a waiver of the sixty (60) day filing period for a continuing education course; 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.

806 KAR 9:320. E. Kentucky access requirements. A motion was made and seconded to approve the following amendment: 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.

Division of Health Insurance Policy and Managed Care: Health Insurance Contracts

806 KAR 17:320 & 8. Kentucky access requirements. A motion was made and seconded to approve the following amendment: 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.

Financial Standards and Examination Division: Bail Bondsman

806 KAR 34.006. Repeal of 806 KAR 34.005, 806 KAR 34.010, 806 KAR 34.020, 806 KAR 34.030, 806 KAR 34.040, 806 KAR 34.050, 806 KAR 34.055, 806 KAR 34.060, 806 KAR 34.065, and 806 KAR 34.070.

Office of Charitable Gaming: Charitable Gaming

820 KAR 1:001. Definitions for 820 KAR Chapter 1. Chris Lilly, Commissioner, and Tony Royalty, Executive Director, represented the office. Ron Morris, Assistant Director, Kentucky Charitable Gaming Association, and Ed Monahan, Executive Director, Catholic Conference of Kentucky, appeared in favor of these administrative regulations.

Co-Chair Pullin stated that she appreciated Commissioner Lilly and the office amending these administrative regulations to clarify their provisions and to replace the prima facie evidence standard in 820 KAR 1:060 with a rebuttable presumption. If the amendments resulted in any unattended consequences, the Subcommittee would review any necessary revisions.

Mr. Morris stated that these administrative regulations resulted from a collaborative effort between the office and the regulated entities.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A, including the requirements for definitions in KRS 13A.222(4)(d) and (e). Without objection, and with agreement of the agency, the amendment was approved.

820 KAR 1:005. Exempt organizations. 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 1 to specify the name of the required form; (4) to amend Sections 1 and 2 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:010. Temporary license A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (2) to amend Sections 1, 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.

820 KAR 1:015. Issuance of annual license for a charitable organization. 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 Sections 1 and 4 to specify the name of the required form; (4) to amend Section 1 to delete language prohibiting re-application within a year of license denial, to comply with KRS Chapter 238; (5) to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (6) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:016. Distributor and manufacturer licensees. A motion was made and seconded to approve the following amendments: (1) to amend the REFERENCES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to: (a) specify the name of the required form; (b) delete language prohibiting re-application within a year of license

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denial, to comply with KRS Chapter 238; and (c) delete restrictions that applied to distributors and their families, to comply with KRS Chapter 238; (4) to amend Sections 1, 3, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:017. Licensing inspections. 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 1 to (a) delete language that required the applicant to pay the costs of inspections, to comply with KRS Chapter 238; and (b) comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:025. Quarterly reports of a licensed charitable organization. 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 1 to clarify the quarterly reporting requirements and due dates; (4) to amend Section 2 to clarify the requirements for electronic reporting, the reporting period and due dates; (5) to amend Section 2 to clarify the language that repeated or altered the statutorily-established penalty provisions in KRS Chapter 238; (6) to amend Sections 1, 2, 4, and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (7) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:026. Quarterly reports of a licensed charitable gaming facility. 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 Section 1 to clarify the quarterly reporting requirements and due dates; (3) to amend Section 3 to delete language that repeated or altered the statutorily-established penalty provisions in KRS Chapter 238; (4) to amend Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:027. Quarterly reports of a licensed distributor. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO 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 clarify the quarterly reporting requirements and due dates; (4) to amend Section 3 to delete language that repeated or altered the statutorily-established penalty provisions in KRS Chapter 238; (5) to amend Sections 1, 2, and 4 to comply with the drafting and format requirements of KRS Chapter 13A; and (6) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:028. Late fines. A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to change it to “Late Quarterly Report Filing” to more accurately describe the content of this administrative regulation; (2) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, this administrative regulation, as required by KRS 13A.220; and (4) to amend Section 1 to: (a) delete language that repeated or exceeded statutory provisions in KRS Chapter 238; and (b) provide that a late filing of a quarterly report or fee shall be a violation subject to disciplinary action under KRS 238.560(3). Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:029. Facility licensees. 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 1 to: (a) specify the name of the required form; (b) specify that the Office shall grant or deny a license application within sixty (60) days; and (c) delete language prohibiting a re-application within a year of license denial, to comply with KRS Chapter 238; (4) to amend Section 4 to: (a) delete restrictions that applied to distributors and their families, to comply with KRS Chapter 238; and (b) specify that payment of a rent equivalent by a charitable organization to itself shall not make the organization a lessee to itself, to comply with KRS Chapter 238; (5) to amend Sections 1 to 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (6) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:031. Repeal of 820 KAR 1:030, 1:040, and 1:070. A motion was made and seconded to approve the following amendments: (1) to amend the TITLE and Section 1 to add 820 KAR 1:031, “Product of Haslambrook” to clarify the licensing being repealed; (2) to amend the RELATES TO paragraph to correct statutory citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for, and function served by, this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:032. Pulltab construction. 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 Section 2 to clarify the information that must be printed on pulltabs; (3) to amend Section 10 to clarify the information that must be recorded for sales by licensed distributors; and (4) to amend Sections 2 to 8 and 10 to 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.

820 KAR 1:034. Pulltab dispenser construction. 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; and (2) to amend Section 2 to clarify the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:036. Pulltab rules of play. 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; and (2) to amend Sections 1, 2, 4, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:042. Bingo paper standards. 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; and (2) to amend Sections 1 and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:044. Bingo equipment. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct statutory citations; (2) to amend Section 2 to delete the requirement that the testing facility be approved by the Office; (3) to amend Section 3 to require that the total sales activity report be completed on Form CG-CMD, effective October 1, 2006; (4) to amend Sections 1 to 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to create a new Section 7 to incorporate by reference a required form. Without objection, and with agreement of the agency, the amend-
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820 KAR 1:046. Bingo rules of play. A motion was made and seconded to approve the following amendments: to amend Sections 1 to 9 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:050. Raffle standards. 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 need for, and function served by, this administrative regulation, as required by KRS 13A.220; (3) to amend Section 3 to: (a) specify that if a winner is not present at a raffle drawing, the organization shall notify the winner by certified mail within seven (7) days of the drawing; and (b) require that the organization notify the office and draw another ticket in the presence of Office personnel if a raffle prize is not claimed within thirty (30) days of the winner being contacted; and (4) to amend Sections 1, 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.

820 KAR 1:055. Charity fundraising event standards. 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 need for, and function served by, this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to require completion of the specified form; (4) to amend Section 1 to specify that pursuant to the agency’s discretion under KRS 238.505(8), the office has determined that charity game tickets, or pulltabs, shall not be an approved game of chance at charity fundraising events held by exempt organizations; (5) to amend Sections 1 to 4 and 6 to comply with the drafting and format requirements of KRS Chapter 13A; and (6) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:056. Special limited charity fundraising event standards. 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 need for, and function served by, this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to require completion of the specified form; (4) to amend Sections 1, 2, 3, and 5 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:057. Accurate records. 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 need for, and function served by, this administrative regulation, as required by KRS 13A.220; (3) to amend Section 1 to specify that items shall be counted as part of an organization’s gross receipts. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:058. Gaming Occasion Records. 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 need for, and function served by, this administrative regulation, as required by KRS 13A.220; (3) to amend Section 6 to specify the record-keeping requirements for raffles conducted pursuant to 820 KAR 1:050; (4) to amend Sections 1 to 10 to comply with the drafting and format requirements of KRS Chapter 13A; and (5) to amend the material incorporated by reference to comply with the content of this administrative regulation. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:060. Tipping prohibited. 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 that it shall be a rebuttable presumption, rather than prima facie evidence, that a person was receiving compensation (in violation of KRS Chapter 238) if the person volunteered at more than four (4) gaming occasions a week or four (4) special limited charitable fundraising events per year; 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.

820 KAR 1:120. Other allowable expenses. A motion was made and seconded to approve the following amendments: (1) to amend the TITLE to state "Allowable Expenses" to more accurately reflect the contents of this administrative regulation; (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 the STATUTORY AUTHORITY paragraph to correct a citation; (4) to amend Section 1 to specify what may be included in printing costs; and (5) to create a new Section 2 to specify the items that may be included in various charitable gaming expense categories, including utilities, advertising, bookkeeping, and security. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:125. Gaming Inspections. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (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 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.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Adult and Child Health Improvement: Division of Administration and Financial Management: Local Health Departments


In response to questions by Co-Chair Roeding, Mr. Nelson stated that these administrative regulations applied to all local health departments except for Lexington-Fayette County, Independent; Louisville Independent, Jefferson County; and Oldham County because by statute, they have separate programs. Their programs were similar to the one established by these administrative regulations.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the function served by this administrative regulation; and (3) to amend Sections 1, 3, 7, 8, and 10 through 13 to clarify standards for salary adjustments and comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8.070. Recruitment, examination, and certification of eligibles for local health departments. 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 Section 4(2) to delete a reference to a scored examination that was no longer required; and (3) to amend Sections 1 and 3 to 6 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8.080. Initial appointment, probationary period, layoffs, and the resignation of employees of local health departments.
A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; (2) to amend Section 7(5) to clarify employment standards for variable hour positions; (3) to amend Section 10(9) to clarify what types of classifications might require a longer initial probationary period; and (4) to amend Sections 7 to 15 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 6:090. Promotion, transfer, and demotion of local health department employees. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation; (3) to amend Section 1(5) to clarify employment standards for a regular status employee separated from an unclassified position following promotion; 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.

902 KAR 6:096. Local health department employee performance evaluation program. A motion was made and seconded to approve the following amendments: (1) to amend Section 4 to clarify the concept of annual increments; and (2) to amend Sections 1, 2, 4, 5, and 7 through 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.

Department for Medicaid Services: Division for Long Term Care and Community Alternatives: Medicaid Services

907 KAR 1:065 & E. Payments for price-based nursing facility services. Stuart Owen, Regulation Coordinator, represented the department.

Department for Community Based Services: Division of Policy Development: Adult Services

922 KAR 5:070 & E. Adult protective services. Jason Moseley, Director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; (2) to amend Section 2(5) to clarify the resources available to a person who did not meet the criteria for services under this administrative regulation; (3) to amend Section 2(6) to state that the safety of the adult shall be taken into consideration when proceeding with an investigation; (4) to amend Section 3(11) to clarify instances when a legal representative was prohibited from representing an adult; (5) to amend Section 10 to clarify standards pertaining to involuntary hospitalization; and (6) to amend Sections 2, 3, 5 to 8, and 10 to 13 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

922 KAR 5:102 & E. Domestic violence protective services. A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to insert statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 to 5, 7, and 8 to delete the superfluous phrase "inflicted by a spouse" following the term "domestic violence"; (3) to amend Section 3(8) and (10) to clarify the resources available to a reporting source or victim who did not meet the criteria for services under this administrative regulation; and (4) to amend Sections 2 to 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.

The following administrative regulations were deferred to the next meeting of the Subcommittee:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Office of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9.310. Viatical settlement broker license.

Division of Health Insurance Policy and Managed Care: Health Insurance Contracts

806 KAR 17:510. Health benefit plan exclusionary rider requirements.

Kentucky Horse Racing Authority: Thoroughbred Racing

810 KAR 1:028 & E. Disciplinary measurements and penalties. Lisa Underwood, Deputy Commissioner and General Counsel, and Dr. Andrew Roberts, represented the authority. Frank Becker, General Counsel, Kentucky Horsemen's Benevolent and Protective Association (HBPA), appeared in response to this administrative regulation. Robert Stallings, Counsel for equine veterinarians, appeared in opposition to this administrative regulation.

In response to questions by Representative Lee, Ms. Underwood stated that the amendments to this administrative regulation established voluntary withdrawal guidelines and included threshold levels for nine (9) of the fifty (50) most commonly used equine medications. The Authority would continue to work on developing thresholds for the remaining medications. Dr. Roberts stated that the withdrawal guidelines provided a safety zone which was broad enough to prevent most inadvertent testing violations.

Representative Lee stated that as currently drafted, this was not a fair administrative regulation. By not including thresholds for all fifty (50) medications, it imposed undefined standards on the horse racing industry.

Senator Pendleton stated that he appreciated the authority's development of withdrawal guidelines and the partial list of thresholds. However, based on his experience in the livestock industry, it was important to determine thresholds for the remaining medications as soon as possible.

Mr. Becker stated that the amendments significantly improved this administrative regulation. While the HBPA would prefer if the withdrawal guidelines were not advisory and if there were thresholds for all fifty (50) medications, it did not object to the amendments being approved.

In response to questions by Senator Pendleton, Mr. Stallings stated that for many years, other states have had threshold levels for all fifty (50) equine medications. Dr. Roberts stated that it was a gross misrepresentation of the facts to claim that thresholds existed for all of the medications. In fact, a few states have withdrawal times based on doses. Because it was such a complicated and time-consuming process to develop threshold levels, the authority decided to start with the nine most commonly used equine medications.

Senator Tapp stated that he appreciated the authority working with the other interested parties and developing the withdrawal guidelines and thresholds. He urged them to continue the development process. He had not been informed of any concerns reported to the Subcommittee. Mr. Becker stated that he did not have any concerns.

He made a motion, which was seconded, to approve the following amendments: (1) to amend Section 1 to clarify that the term "drug" as used when defining drugs by class also includes "medications or substances"; (2) to amend Section 2 to: (a) clarify that alleged violations of Title 810 shall be adjudicated in accordance with 810 KAR 1:029 and KRS Chapter 13B; (b) require license suspensions or revocations to be calculated in calendar days only; and (c) insert standards for when a horse may be required to be housed prior to race time; (3) to rewrite Sections 4, 5, 6, 9, and 10 to: (a) insert the new requirement that fines, if agreed to by the alleged violator and the authority, may be assessed in mitigation of a license suspension or revocation for certain violations of 810 KAR 1:018 and other sections of Title 810, and delete language allowing the authority and the stewards to assess fines without the agreement of the alleged violator; and (b) insert language requiring penalties to be assessed in keeping with the seriousness of the violation and the facts of the case; (4) to amend Section 11 to incorporate by reference the KHRA Withdrawal Guidelines; and (5) to amend throughout to comply with the drafting and format requirements of KRS Chapter 13A. The motion failed on a voice vote.

Senator Pendleton made a motion, which was seconded, to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred.
CABINET FOR HEALTH AND FAMILY SERVICES: Department for Mental Health and Mental Retardation Services: Institutional Care

908 KAR 3.190 & E. Drug testing policies at a state operated facility for persons with mental illness or mental retardation.

The subcommittee adjourned at 3:10 p.m. until March 13, 2006.
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.

House Standing Committee on Health And Welfare
Meeting of January 4, 2006

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Welfare for its meeting of January 12, 2006, having been referred to the Committee on January 4, 2006, pursuant to KRS 13A.290(6):

902 KAR 4.040 & E
908 KAR 3.050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 12, 2006 meeting, which are hereby incorporated by reference.

House Standing Committee on Transportation
Meeting of January 12, 2006

The following administrative regulations were available for consideration and placed on the agenda of the House Committee on Transportation for its meeting of January 12, 2006, having been referred to the Committee on January 4, 2006, pursuant to KRS 13A.290(6):

601 KAR 1:050 & E
603 KAR 5:050

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 January 12, 2006 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

Senate Standing Committee on Health and Welfare
Meeting of February 1, 2006

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of February 1, 2006, having been referred to the Committee on January 4, 2006, pursuant to KRS 13A.290(6):

902 KAR 4.040 & E
908 KAR 3.050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 1, 2006 meeting, which are hereby incorporated by reference.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates

The Locator Index lists all administrative regulations published in VOLUME 32 of the Administrative Register from July, 2005 through June, 2006. 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 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.

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 32 of the Administrative Register.

Subject Index

The Subject Index is a general index of administrative regulations published in VOLUME 32 of the Administrative Register, and is mainly broken down by agency.
## LOCATOR INDEX - EFFECTIVE DATES

### 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:

(Nota: 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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